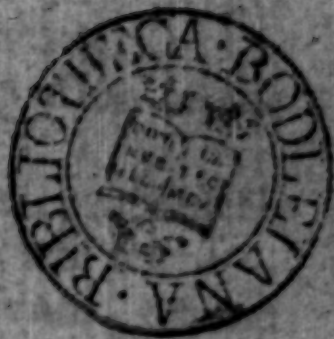


A briefe treatise of Oathes exacted  
by Ordinaries and Ecclesiasticall Iudges,  
to answere generallie to all such Articles  
or Interrogatories, as pleaseth them to  
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4<sup>o</sup>. 0. 5.

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(\*\*\*)



Orasmuch as the matter whereof we  
meane to intreate is concerning Oathes,  
It will bee verie necessarie for the better  
vnderstanding thereof, firste to consider  
what an oath is, and the nature thereof:  
By whom it was instituted, and to what  
vse, end and purpose: How many kindes  
of lawfull oathes there are, & howe they ought to behaue  
themselves that cyther require or receyue an oath.

An Oath therefore (as learned Diuines haue defined) is  
a calling or takinge to recorde or witnesse of the sacred  
Name of God, or of God him selfe by the vse of his holie  
Name, for the confirmation of the trueth of such thinges  
which we speake, or for the true performance of our pro-  
mise. Or more brieflie: An oath is a confirmation of the  
will of man by the testimonie of God.

The same of his owne nature, in asmuch as it proceedeth  
from a right faith is verie good, for thereby wee acknow-  
ledge all things to bee thoroughlie knowen vnto God, and  
that he is a louer of trueth, and a reuenger of perjurie. It  
serueth also to the honor of Almighty God, because ther-  
by we extoll and magnifie his most holie Name, and con-  
fesse the excellencie of his great Majestie: for that men  
swear by him that is greater. It is a part of his diuine ser-  
uice, and commanded by him. And the same is to be vsed  
onely for the setting forth of the glorie of God, and for the  
profite and benefite of men.

Hebrewes  
cap. 6.  
Deuterono.  
cap. 6. 13.



... confirmation thereof was from and by God him self,  
for the helpe and reliefe of our necessitie, eyther for the  
Assurance of such dueries, couenauntes, contractes & pro-  
mises as we owe or make: or to procure faith or credit (cer-  
tainie of prooffe sayling) to the truth which wee affirme:  
That an end of controuersies may be had. For (as it is writ-  
ten in the same chapter of the Epistle to the Hebrewes) An  
oath for confirmation is amongst men *An ende of all strife.*

Oathes are of two sortes, that is to say,  
*prinate and publique.*

Prinate oathes are made betweene prinate persons con-  
cerning their particular affaires. As for th' assurance of du-  
ties, couenauntes, agreementes or promises, or to procure  
faith and credite to be giuen to that which is ment to bee  
perswaded. Of which kinde of oathes wee haue many ex-  
amples in the sacred Histories, as in the booke of *Genesis*  
cap. 24. and cap. 31. *1. Sam.* cap. 20. *1. Regum* cap. 18. *Hie-*  
*rem.* cap. 38. and many other whiche for breuities sake I  
omitte.

Publique oathes are of diuers and sundrie sortes. As  
where Kings and Princes sweare for the establishment of  
their leagues and conclusions of peace.

Or where the Prince and people sweare eache to other:  
The Prince to rule and reigne iustlie: The people in due al-  
leageaunce to obey faithfullie. This kinde of oathe was  
vsed *2. Sam.* cap. 5. betweene *Dauid* the king & th' Elders  
of Israel. In the booke of Iudges we read also howe th' El-  
ders of *Gilead* sware subjection vnto *Iephthah*.

An other kinde of publique oathe we see *2. Cron.* cap. 15  
where kinge *Asa* made the people of Israel to take an oath  
for the true worship and seruice of Almighty God, and the  
observation of his Lawe. An oath not much different was  
that in *Ezra* cap. 10.

That is also a publique oath whiche the Magistrates,  
Iudges and Officers of Iustice take for the true and sincere  
admi-



## O F O A T H E S.

administration of the Lawe. So is also the oath of Souldiours and men of warre, swearing obedience to their Generalls, Captaines and Commaunders.

An other kinde of publique oath is that likewise which the Iudge or Magistrate ministreth vnto such as are called to depose and testifie the truerh in causes of suite and controuerſie, depending in Courtes or places of Iustice.

And that also which either of the aduersaries take in the same suites, or the defendant for the finall ending and determination of the controuerſie, which of some is termed a iudiciall oath, and being offred by the defendant, it is of necessitie to the plaintife, for that hee cannot refuse to accept of the same.

Of this last sorte, among the lawes Iudiciall it is written thus: If any man deliuer to his neighbour to keepe Affe or Oxe or Sheepe, or any beast, and it dye or be hurt, or be taken by force, & no man see it, An oath of the Lord shalbe the meane betwene them twaine, that he put not his hand vnto his neighbours good, And the owner of it shall accept the oath, and the other shall not make it good.

Exod. ca. 22.

Concerning him that is to take an oath, he is taught by the holy Ghost first to sweare in truerh. That is to say true- lie without falshood, deceit, or dissimulation, the heart & mouth agreeing in one: for since God is the authour and louer of truerh, and the Diuell is a lyar, and the father of lies, there can not be a greater dishonour or indignitie offered to the sacred Maieſtie of God, then to make his most fearfull and reuerende name, a witnesse of falshood or deceit, neither let any man thinke that by craftie or subtill swearing he can auoyde the detestable sinne of perjurie. For *fraus distringit non dissoluit perjurium*, fraude strayneth harder, it dissoluerh not the perjurie as the learned Tullie verie well saide,

The de-  
ponent.

Hier. ca. 4.

Secondlie, he that taketh an oath ought to sweare in judgement, that is to saye, with good discretion, soberlie, well aduised and assured of that he wil affirme or denie vpon his oath, Not ignorauntlie, rashlie, vainlie, or in causes

Hier. ca. 4.



of no moment or necessitie for such vaine and foolish swearing is expresse forbidden by the commandement, wherein also God threatneth, That he will not holde him guiltles, that taketh his name in vaine, that is, wil surelie punish him that so abuseth his name. The same also in the newe Testament is by Christ him selfe condemned. Moreouer the holy Ghost by the Preacher well aduisech euerie man not to be rashe with his mouth, nor to suffer his heart to be halie to vtter any thing before God, for that (sayeth hee) God is in the Heauens, and thou art on the earth.

In justice or righteousnes also ought an oath to bee taken, that is in things iust and lawfull, not repugnaunt to the will or commaundement of God. For although it be true that is saide, *Non est obligatorium contra bonos mores praestitum iuramentum*, yet by swearing to doe the thinge that is vnjust or vnlawfull, the glorious name of God is dishonored. And such a speech saierh *Ecclesiasticus*, is compassed about with death. Brieflie, the respect of euerie deponent should be, that God by his oath may be magnified, the trueth in question confirmed, justice maintained, and that Innocentes (by fraudulent practizes circumvented) may be freed and deliuered from perill and daunger.

*The Magistrate.*

Touching such as haue power and authoritie to require or commaunde an oath, they ought also to bee verie careful and circumspect that they impose not the same but in causes of waight and necessitie, which is neuer to bee intended but when the honour and glory of God is to bee maintayned, or the good of the common wealth, or of our neighbour furthered. For if it be a Principle *De minimis non curat lex*, by good reason the Magistrates and ministers of lawe should spare to vse that which is most holie and precious in causes of litle price or moment, for dailie experience sheweth, that the frequent vse of thinges reuerent (such is the corruption of our nature) causeth them to be of none accompt. Furthermore, they ought to be well aduised that they require it not of me of suspected faith or credite, or of persons defamed in life and conuersation. For an oath offered to such (without greater necessitie)



## OF OATHES.

the) argueth a lightnes and want of good discretion in the Magistrate, who thereby wittinglie doeth minister an occasion of perjurie, whiche if it followe, howe great is the fault? Moreouer, that they charge no man by oath to doe the thing impossible or beyonde his power. For *impossibitium nulla est obligatio*, nor any thing that is vnlawfull, inconuenient, or vngodlie. Neither force any man to sweare rashlie or vnadvisedlie. For if the vaine and inconsiderate swearer shall not be unpunished, howe shall the procurer escape Gods vengeance? That they abuse not the simplicitie of the Deponent by intricate, captious, or subtrill questions: for let no man sayeth the holy Apostle Saint Paul) beguile or craftelie circumuent his brother, for the Lorde is an auenger of all such things. Finallie in the ministring of an oath the Magistrates ought to respect all those things which the partie deposing ought to haue before his eyes, that is the glorie of God, the maintenance of trueth, & the good of our brethren.

1. Thes. ca. 4

These things graunted, which cannot be denied, it consequentlie followeth that the forcing of Oathes by Ordinaries and Iudges Ecclesiasticall generallie to answer vnto all such questions or interrogatories as they shall demaunde or minister touching eyther the thoughts, wordes or deedes of him that is to depose, is contrarie to the honorable institution, lawfull vse, and true ende of an oathe. And that whosoever by coulour of authoritie, threatening speeches, duresse of imprisonment, or other paine constraineth any man to sweare in such maner, doeth highlie offende against th'invincible rules before remembred.

For first as it hath bene saide, the ordeyning and institution of an oath was to helpe and relieue the necessitie of men in the causes before rehearsed. But there is no necessitie or vrgent cause why such a general oath should either be required or take, since the same is neither for assurance of duetie, conenaunt, contract or promise, neyther yet for confirmation of trueth in any cause or matter of controverisie. If it bee alleadged that the same is requisite for the enquiring and finding out of suspected faultes, whereof there



8  
... A T R E A T I S E ...  
there is no prooffe, and to search and trie the euill mindes  
and corrupt consciences of daungerous dissemblers, and  
so necessarie for the gouernement both of the Church and  
common wealth. By this allegation first all such are justly  
reproued, who hauing practised and put in ure this gene-  
rall oath, where otherwise there was sufficiencie of prooffe.  
And yet thereby nothing is saide for the maintenance of  
their doings in that behalfe, since by the like reason there  
should be erected a Court of Inquisition more then Spa-  
nish to sift & ransacke by oath the most secret thoughtes  
and consciences of all men in generall, enforcing them ei-  
ther to accuse them selues (not as in the Papisticall Thrift,  
where secrecie was enioyned) to their publique shame, re-  
proach and condemnation, or els for the auoyding of such  
mischiefe and inconuenience, to committe most wilfull  
and damnable perjurie. But as this I suppose in all good  
mens opinions, were intollerable, so of the other I assure  
my selfe there can be no sounde rule, sufficient president  
or example alleadged: Except peraduenture the proceeding  
of the high Priest, the Scribes and Elders of the Iewes in  
their Consistorie against our Saviour Christ, shall be vou-  
ched and mainteined for a sufficient president in that bee-  
halfe, who maliciouslie apposing and examining him con-  
cerning his doctrine (although not by oath) would glad-  
lie haue pickt out and drawne from him selfe some mat-  
ter of accusation, whereby to haue condemned him. But  
the aunswere and authoritie of Christ (I doubt not) wil be  
allowed among Christians, both for sounde and sufficient  
to refell and condemne the practize of those malignaunt  
Priestes, who knowing their subtil purpose and intent, re-  
ferred them to his auditours, and being in iustlie stricken,  
replied: If I haue euill spoken, beare witnesse of the euill,  
but if I haue well spoken, why smitest thou mee, justifying  
hereby his former aunswere, and forcing therewithall his  
aduersaries to seeke for witnesses to testifie against him.

The true vse and ende of an oth is, as aforesaide, That  
due honor may be giuen vnto God, the truth confirmed,  
Iustice maintained, innocencie protected, and an end had  
of



# OF OATHES.

of strife and contention. But how is God glorified hereby, or not rather dishonored, when as his sacred institution is so greatlie perverted, and an oath forced to an other course and purpose, then he in his diuine wisdom hath appointed, as by that which hath and shalbe spoken, doth & shall manifestlie appeare. The trueth in controuersie is not thereby confirmed, since there is no issue ioined in this case betweene parties affirming and denying, and how can iustice by such an oath be maintained, when as the cause for which the oath is vrged, standeth not in lawfull course of judgment? for as it is well said of a learned man: *Iudicium est in qualibet actione trinus actus trium personarum: Iudicis, actoris, & rei, secundum quod large accipi possunt huiusmodi persona, quod due sunt ad minus inter quos vertatur contentio, & tertia persona ad minus qui iudicet, alioquin non erit iudicium, cum istae persona sunt partes principales in iudicio, sine quibus iudicium consistere non potest.* Then whensoever any fault or matter of offence by meanes of this kinde of compulsory oath happeneth to be disclosed, either we must say that the Iudge, who imposeth the oath, is him selfe against all order of justice, the partie accuser, and so both Iudge and Promoter, which all good lawes forbidde: Or els the Deponent must of necessitie susteine two principall partes in judgement, that is to be bothe *Actor & Reus*, Accuser and accused, whereby the three principall parties, by the rule aforesaide, saylinge true judgement, by no meanes may consist. Furthermore, by this kinde of oath it can not be truely saide, that Innocentes circumvented by fraude or practise, are cleared, since there is no complaint or accusation iudiciallie exhibited. Except we shall affirme that the Iudge or Magistrate by enforcing such an oathe, doeth him selfe play the part of a subtil circumventor and accuser, which as it is a most wicked sinne in any man, so in the person of a publique Magistrate (whose actions should be sincere) the same is most detestable. And finally, howe can an ende of controuersie ensue by such an oathe, whereas no quarrell or complaint is any way dependinge. Nay rather the same is often tymes the cause of stirring vp

Bracton.

8.H.6. fol.  
18.  
5.Reg. Eli.



of debate and contention in steade of former quietnes, being principallie vsed not to make an end of controuersies, but to procure some accusation, and that by the secrete malice of some vndermining or malignant aduersarie or calumniatour.

Againe, since an oath is to be taken in judgement, that is with good aduise ment and consideration of the matter, wherein the Deponent is to call the Name of God to witnesse, and that whosoeuer otherwise takerh an oath, doeth therein vanelie and indiscreetlie abuse the Name of God. Howe can this generall oath be eyther rightlie vrged or receyued without great offence to his diuine Maiestie, forasmuch as the partie deposing is not before he swear, made acquainted nor vnderstandeth what questions or interrogatories shalbe demaunded, but by his oath hath fast bound and subjected him selfe to the discretion or indiscretion of another, that is the Iudge Ecclesiasticall, who hauinge straightlie tied and snared this feeble subiect, may nowe vse or abuse him at his will and pleasure, eyther against lawe enforcing him by the bande of his oath to accuse him selfe euen of his most secret and inward thoughtes, or contrarie to christian charitie, yea humanitie it selfe, constraining him to enforme against his naturall parentes, dearest friends, and nearest neighbors, or to bewray with grieve of heart such matters of secrecie, as otherwise were inconuenient & peraduenture not honest to be reuealed. In which hard proceeding besides the great hazard & peril of wilful perjurie without all necessitie of an oath, great trouble of minde and scruple of conscience must needes ensue, when as the Deponent on the one side, considering the waight & heauie burthen of his oath, feareth to conceale any thing: and on the other side finding him selfe thereby entrapped, shrinketh to make aunswere to the questions propounded. Whereof you may beholde a most miserable and lamentable spectacle in the booke of Actes & monumentes, where in a large table is set forth the great iniquitie and rigorous dealing of *Longland* Bishop of *Lincolne*, in the time of the late Prince of famous memorie, King H. the eight. Which  
bloudie



blondie Bishop by forced and violent oathes and captious interrogatories, constraigned the children to accuse their parentes, the parentes their naturall children, the wife her husbände, the husbände his wife, one brother and sister an other, some of these feelie soules of sworne becomminge forsworne, whyle they made daintie to accuse such as they dearlie affected. Of which blinde ignorāce (or rather murderous mindes) and intollerable iniquitie of Romish Bish. and barbarous abuse of an oath, that godlie man of wor-  
thie memorie Maister *John Foxe* justlie complaineth. For what might be added more to extreame crueltie, saue only this one point of detestable inhumanitie (whiche also was pursuaunt as a part of that tragical church-gouernement) to compell the children to set fire to their condemned parentes. Which example of crueltie sayeth that good man, as it is contrarie both to God and nature, so hath it not bene seene or heard of in the memorie of the heathen.

That wicked king *Herode* (as it is recorded by the holy Euangelistes Mathewe and Marke) voluntarilie promised, and that with an oath, to giue the dauncing daughter of *Herodias* his harlot, whatsoeuer shee should demaunde. As this vnaduised oath proceeding of vaine pleasure and delight vppon the wicked demaunde of that Damosell wrought much grieve of minde in the king, so was it the cause of the sudden dispatche and murther of that iust man Iohn the Baptist. And although it may truelie be said that *Herode* was not bounde by his oath to haue accomplished so foule and wicked a deede, yet can it not bee denied but that the same was a rashe and inconsiderate oath, and so an offence against the Maiestie of Almighty God. And what difference is there I pray you betweene the oath of *Herode* and that which nowe we haue in question, the one being to performe or graunt whatsoeuer should be required: and the other, to aunswere to all questions that shalbe demaunded, since there may be as vnlawfull and as vn honest questions ministred, as vngodlie requestes made or desired.

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the sacred scriptures (to my remembrance) there is no one president or example to bee shewed of any such generall oath taken by any godlie man in priuate, or exacted by any Magistrate in publique, neither yet any rule, lawe, or commaundement for the same.

But against this our last assertion may happilie bee alledged by some fauourer of this foule abuse, the manner of triall by adjuration of the suspected wife, that is the law of jelousie. The inquisition and expiation of man-slaughter, where the authour is vnknownen, and the examination of *Achan*: all which neuerthelesse make nothing for these generall oathes, or those enjoyned *ex officio*, as by the consideration of the lawes and historie it selfe shall easilie appeare. For as concerning the lawe of jelousie, although the wife were to be tried by oath and adjuration in that manner and with those circumstances as is there prescribed, either to satisfie the restless head of her jelous husbande, if shee were guyltlesse, or to receyue by the wonderfull workinge of that accursed water, if shee were faultie condigne punishment for her heynous offence, both of perjurie and adulterie, yet is it verie manifest in this case that the wife is not sommoned or cited by the Priest or Magistrate *ex officio*, but brought vnto him by her accusing husband, who vpon offence conceyued offering vp his complaint, and thervpon the woman is called for, and put to her purgation, well knowing her accusor, and hauinge perfect notice before shee sweare of the crime objected. Moreouer, who is so simple that seeth not howe weake an argument or conclusion this were. God hath appointed an oath to be taken by the wife in this especiall and singular case of jelousie for the satisfaction of the suspitious minde of the husband, *Ergo* euery Iudge Ecclesiasticall to satisfie his jelous suspicion or imagination of any crime, may appose by oath and compell men to their purgation. For by as good reason the Ordinarie or Iudge Ecclesiasticall may also vpon euerie such oath denounce a curse of consumption and rotting to the partie deposing in such & the same maner as there is prescribed.

And



And as touching the inquisition for murther or manslaughter before remembred, it is ordeyned, that the Elders of that Citie, which vpon measure taken falleth out to be next vnto the slayne man, should washe their handes ouer a beheaded Heyfer, protesting and saying in the presence of the Priestes: Our hands haue not shed this blood, neyther haue our eyes-seene the sleare. O Lorde be mercifull vnto thy people Israel, whom thou hast redeemed, & lay no innocent blood to the charge of this people, &c. Howe any thing here may proue the exacting of oathes to be lawfull, I see not. A man is slayne, th'offendour vnknownen, th'Elders by this especiall lawe of expiation doe protest as aforesaide. But where is an oath in this case giuen to any particular person? If this protestation shall bee thought in some sorte to conseruaile an oath of purgation, yet where is there any protestation or oath required or taken to aunswere generallie to such Interrogatories as shalbe propounded vpon vnknowne, secret, or barelie suspected matter? Nay we see euidentlie, the fact and felonie (to th'offence both of God and man) to bee publique and apparaunt, th'offendor only lyeth hidden and vnknowne. On the contrarie, those Inquisitors *ex officio*, haue the man before them whom they will examine, but the matter for the most part is secreat and concealed which they enquire after, and many tymes there is no matter at all but bare & naked suspicion or fame of a cryme neuer committed.

Concerning *Achan* and the proceeding against him, we see by the sacred historie howe the offence in generall is by God him selfe made manifest vnto *Ioshua* the Prince of the people (vz) That an excommunicate or cursed thing was taken and concealed, &c. th'offendour was onely to be founde out. Inquisition being had by lot or otherwise, (God assisting) *Achan* is deprehended as guiltie. What followed? He is by *Iosua* examined of the particular, vsing these wordes: My sonne, I beseeche thee giue glorie to the Lord God of Israell, and make confession vnto him, and shewe me now what thou hast done, hide it not from me. Herevpon the detected *Achan* confesseth the trueth in



particular. But where doeth it appeare that hee was deposed, or by what conceyued wordes or forme of oath doeth he sweare? Except wee shall say, there is no difference betweene the intreatie or charge of the Magistrate, remembering the glorie of God, and an oath taken and pronounced by th'offendour to confesse the trueth. Which graunted, it must consequentlie followe, that whosoever is in that manner charged and confelleth not the trueth, although he haue no will to sweare, is both a liar and a person perjured, which were a harde conclusion. Nay rather such kinde of charge as *adiuro te*, as a learned man sayeth, *Non est alium ad iurandum inducere, sed per similitudinem iuramenti alium ad aliud agendum inducere*. And such speeches are also vsed for commaundementes in the name of the Diuine Maiestie, as we reade done by the Exorcistes, & by Sain Paule, who chargeth the Thessal. in the Lord, that his Epistle be read vnto all the brethren the Saints. Otherwise if euerie such kinde of speache should straight way make an oath, then would it followe (wdich were absurde) that the Deuill made our Sauour to sweare at such time as he saide, I charge thee by God, that thou torment mee not.

Thomas  
Aquinas

Act. cap. 19.  
1. Thes. ca. 5

Cap. 9.

I knowe very well what that learned and excellent light of Gods Church Maister *Caluin* saith in his booke of Institution of christian Religion, That is, howe *Josua* minding to driue *Achan* to confesse the trueth, said: My sonne giue glorie to the Lord God of Israell, meaning thereby that the Lord is grieuouuslie dishonored, if a man sweare fallsie by him. And this maner of speac<sup>h</sup> sayeth hee, was vsed amonge the lewes, so oft as any was called to take an oath, as appeareth by the like protestation that the Pharisees vse in the Gospell of Saint Iohn. In the booke also of *Ezra* we reade the same phrase (Giue prayse vnto the Lorde) as some in Englishe haue translated it, but according to the Latine translation of the learned *Tremelius & Iunius*, the wordes are, *adite confessionem Jehoua Deo*. So that although it bee graunted that where an oath was giuen for the confession of the trueth, there the Magistrate vsed



used those wordes (Giue glorie vnto God, putting the partie in minde thereby of the Maiestie of Almighty God) yet followeth it not that in euerie place where wee finde the same speach, there the partie to whom it was spoken, had taken an oath to confesse the matter whereof hee was demanded. But be it graunted that *Achan* made his confession by oath, yet nothing will ensue thereof to iustifie the dealings of those Inquisitors *ex officio*. For if those rough and rigorous exactors of an oath followinge onely this legall course of inquisition set forth in this sacred historie, That is after an offence committed so grieuous and dangerous to the publique estate, and the same made knowne and notorious, would then onelie seeke out the partie offending, and that by due and lawfull course of triall: and hauing founde him, then after so mylde and courteous a manner, and in the name of God intreat, or (if they thinke good) depose him to reueale the trueth in particular: No man (I suppose) would finde him self grieued with their proceedings. But this their vnjust dealinge in this great abuse of an oath, can not by authoritie of the holie scriptures be any way defended or mainteyned. Wiselie therefore and with good discretion did that godlie man *William Thorp* in the time of King Henry the fourth, being willed by that bloodie persecutor of the true Christians Archb. *Arundell*, to lay his hande vpon the booke, and sweare faithfullie to submit him selfe to his correction, & to stande vnto and fulfill his ordinaunce, desired firste to knowe, wherefore he should be corrected, and vnto what ordinaunce he was to be obliged, which being declared to this effect, that he should forsake all the opinions of the sectes of *Lollardes* (in deede the true Christians) that hee should preache no more vnto the people, & that he should from thenceforth become an accuser of such as him selfe was. He vtterlie refused to take any such oath, least thereby he should haue fallen into many foule and heynous sinnes and offences against God, as the abjuringe of true Religion, the forsaking of his lawfull calling against his conscience, & to his publique reproach to become a bloodie

*William  
Thorp.*



die accuser, or (as he him selfe sayth) an appeallor of his brethren, euerie Bishops espie, and the somner of all Eng- lande, deeply detesting such a bad office, as vnmeet for a Minister of the word: nay altogether vnbecoming a faith- full Christian. If any man will say as this Archbish. that a subject ought not to suppose that his Prelat will comaund him any vnlawfull thing, but should repose him self in the good discretion & vpright dealing of his ordinarie, with- out further aunswere: Let the subtrill practise of this one Prelate, and the cruell and the accursed dealinges of that barbarous Bi. *Longlande* stande at this present for a suffi- cient caueat to euerie man that shall depose, to take heede howe he giue ouer-much credite to such glosinge and de- ceyuable speeches, least too late he finde it true, that *faire wordes make fooles faine*. Neyther is this any sufficient al- legation to say, that the partie Deponent is no further bounde to aunswere then the lawe requireth, howe gene- rall soeuer his oath be, since it is false, for the conscience of such a Deponent to stande vpon termes and questions, howe farre by lawe, and by what lawe he is bounde to an- swere.

*John Lam- bert.*

Will you heare also what that godlie and blessed Mar- tyr Maister *John Lambert* sayth concerning the Exactinge of such kinde of oathes, after he had acknowledged it law- full at the commaundement of a Iudge to take an oathe, to say the trueth, wishing the Magistrates neuertheles to minister oathes with great discretion & good aduise- ment, and exhorting them to forbear and spare them in trifling causes and matters of no necessitie, least by too much haunt, first contempt, than perjurie, doe creepe in. Hee proceedeth further to this effect. This haue I shewed saith he, because it pitieth me to heare and see the contrarie vsed in some of our Nation, and such also as name them- selues spirituall men, and should be head ministers of the Church, who incontinentlie as any man commeth before them, anon they call for a booke, and doe mooue him to sweare without any futher respire, yea and they will charg him by vertue of the contentes of the Euangely, to make

true



true relation of all they shal demaunde him, he not knowing what they will demaunde, neither whether it bee lawfull to shewe them the trueth of their demaunde or no, for such things there be that are not lawfull to bee shewed. As if I were accused of fornication, and none could be founde in mee, or if they should require me to sweare to bewraye another that I haue knowen to offende in that vice, I suppose it were expedient to holde me still and not to followe their will, for it should be contrarie to charitie, if I should so assent to bewray them that I neede not, and to whom perhaps (though I haue knowne them to offende, yet trusting of their amendment) I haue promised afore to keepe their fault secreete. Yea moreouer such Iudges sometimes not knowing by any due prooffe, that such as haue to doe before them are culpable, will enforce them by an oath to detect them selues in opening before them their heartes. In this so doing I cannot see that men need to condescend in their requestes: for as it is in the lawe, *Nemo tenetur prodere seipsum*. And in another place of the lawe it is written: *Cogitationis poenam nemo patiatur*. To this agreeth the common prouerbe, *Cogitationes liberae sunt à vectigalibus*, Thoughtes be free from toll. By which wise speech of this good man we may see condemned, and that for iust cause and vpon sounde reasons th'indiscrete and vnlawfull enforcing of this kinde of oathe, seruing to no good, nay rather to bad endes & purposes. We read also howe Bonner that infamous bloudsucker, vnworthie the name of a Bishoppe, hunting (as the wolfe for his pray) after matter of accusation, among many other his mischieuous and detestable factes, offered also this oath *ex officio* vnto the fellowe prisoners of that holy and worthie Martyr Maister Philpot, saying after the rashe and indiscrete maner before remembred, Holde them a booke, you shall sweare by the contentes of that booke, that you shall (all maner of affection laide a part) say the trueth of all such articles as you shalbe demaunded cōcerning this man here present (meaning Maister Philpot.) But those wise and godlie prisoners, well knowing and considering howe they ought to



take an oath, answered to this vnjust request: That they would not sweare, except they first knewe wherevnto, and being therevpon offred an oath, and that with threatnes of Excommunication to aunswere the articles propounded against themselves, refused it also, saying: That they would not accuse them selues. So that wee see plainly by these examples, as also by that auncient and godlie writing intituled *The prayer and complaint of the Ploughman*, that this kinde of generall oath and examinations *ex officio mero*, were not first misliked by Iesuites and seminarie Prieltes, and frō them deriued to others that mislike gouernement and would bring the Church to an Anarchie, as the world hath bene borne in hande. But by true Christians, holie, learned and Religious men, and that for good causes and considerations why they should so doe.

And I should much meruaile, were it not that the world hath euer bene set in wickednes, howe any that professe the holie name and title of Christianitie, durst at any time put in practize within this Realme or elsewhere, so prophane and more then heathenlike manner of Inquisition, not onely repugnaunt to God and Christian Religion, but contrarie also to the rules and cannons of the Antichristian church of Rome. Which lawes (if I be not deceyued) are more just and lesse vnjust a great deale, then such as haue taken vpon them to judge by coulour of the same. So that in a sorte it may be verified of them which was sometimes spoken of the people of *Athens*, that hauing just & good lawes, they neuerthelesse behaued them selues as bad and dishonest men. For it is saide by some of their Canonistes, *Procedere ex officio mero, est quando Index à seipso & ex officio assumit informationes contra delinquentem, & contra eum procedit, & hoc est quod dicitur procedere per viam inquisitionis. Et recte loquendo, inquirere contra aliquem, non est ei transferre Inquisitionem, sed recipere testes seu informationes contra eum.* And moreouer, *Formare inquisitionem contra aliquem, est facere processum informatiuum assumendo informationes & iudicia contra eum super aliquo delicto.* So that to proccede by inquisition, is

not

Canonists

Jul. Cla. in  
proc. crim. 2  
fin. 1. quæst.  
vers. quæro  
quibus.



not to make the partie by oath or examination to bee his owne accuser, but to accept and receyue information and witnessses against him.

And in what sorte and maner the proceeding ought to be, is also declared to this effect: *Iudex nunquam debet procedere ex officio, & sic per viam inquisitionis, nisi aliquod precedat quod appareat viam inquisitioni scilicet, vel defamatio, vel querela partis, vel denunciatio, vel huiusmodi, aliter processus erit, nullus ipso iure neque in hoc intenduntur notificationes facta extra judicialiter, neque illa quae sunt incerto autore, & suppresso nomine notificantis.* By whiche wordes manifestlie appeareth, that no Iudge Ecclesiasticall ought to proceede by way of inquisition, except there precede a defamation of the partie complaint, or information against him, intelligence of faultes and offences out of course of judgement, or by vncertaine authour, or suppressed name, is wholie by the Lawe rejected, but by the executors thereof altogether admitted.

Another also therevnto agreeing, sayth: That the inquisition is not orderlie done, but where *infamia precedat, vel talia iudicia sufficientia quae probentur per testes idoneos.*

And to prooue the same or infamie, there is required *testes multi*, the reason, *quia dicta paucorum non infamant.*

Secondlie, they must bee *graves & honesti, non maleuoli, nec inimici partis*. Thirdlie, they must bee such as are conuersant in the place where the partie hath liued, whereby they may bee acquainted with the order and manner of his life and conuersation, wherevpon chiefelie riseth the true judgement of his good or euill fame. Fourthlie, those witnessses ought to be receyued judiciallie. Fifthlie, they must be deposed. And sixtly, they are to render a wise and sufficient cause of their knowledge of the infamie. The Iudge in no cause (if he would of his owne knowledge say, the partie is infamous) is to bee receyued or beleued, the reason is, for that the lawe will *quod secundum acta & probata iustitia ministreretur.* And the grounde and foundation of the inquisition must not be extorted or wrested from the partie, but, lawfullie pro-

Io. pet. de  
ferr. in prae  
sub rubr.  
form. inqui  
sitionis &  
fama publ.



ved as aforesaide by sufficient witnesses. Notwithstanding all which lawes, what contrarie courses haue bene practized by Ordinaries and Cleargie men, many haue felt, and euery man knoweth too well. So that concerninge their iudiciall Courtes and Consistories, the saying of the Poet is verified, *Victa iacet pietas, & virgo cade madentes ultima coelestium terras astra reliquit.*

But since that more then two quaternions of learned Canonistes haue of late taken the paines to set downe the vndoubted groundes of the lawe Ecclesiasticall (as they say) according to which the proceedings haue bene vsed time out of minde, in all the Courtes Ecclesiasticall of this Realme, and all other proceedings haue bene at all times reformable by appellations, Let vs heare also what they say concerning this matter.

These Doctors firste graunt it to bee good and sounde law, That no man may be vrged to bewray him self in hidden and secrete crimes, or simplie therein to accuse himselfe. They confesse further, that if any man besides the Ordinarie will prosecute in their Courtes, making himselfe partie to proue a cryme whereof there is suspition: The partie conuented in that case, albeit he must answere on his oath to other articles not principallie touching the verie crime objected, is not bounde by lawe to answere vpon oath any articles of the verie crime it selfe. Neuerthelesse say they, when by circumstaunces once knowne abroad, secrete crymes are become vehementlie to bee suspected, and offensive to the well disposed, and dangerous to be suffred, then are they meete by enquirie and all good meanes to bee discovered, to the ende they may bee reformed, & the partie delinquent brought to penitencie, and others discouraged to commit the like.

The wayes and meanes how suspition & fame of crimes come to the Ordinaries eares, they saye are these, manie bruites of credible persons called in the lawe *clamosa infamatio*, and presentmentes of Church-wardens and Sydemmen: which presentmentes if they be not direct thorough ignoraunce of the presentours or insufficient in the lawe



to proue a fame (yet some scandall therevppon growinge) howe litle by like is not respected, th'Ordinarie by lawe Ecclesiasticall and good discretion may examine other witnesses, being neighbours, warning the partie suspected to be present. The same once prooued (say they) or the first presentment sufficient than th'ordinarie of duetie, & for the publique trust reposed in him is, to proceede against the infamed, although no other man will, which by lawe is termed proceeding by enquire, especiall *ex officio*, they adde a reason for confirmation *Ne maleficia remanant impunita, vtque Prouincia purgetur malis hominibus.*

And in this sorte, if the Ordinarie proceed *ex officio*, and the partie denie the crime objected, then by lawe hee is enjoyned his purgation. At which time of purgation (say they) he must directlie aunswere in clearing or conuincing him selfe *de veritate vel falsitate ipsius criminis objecti*, and his compurgators are to sweare *de credulitate* (weying his feare of God and conuersation of former tymes) That they beleue he hath taken a true oath, whiche if they all doe, then he is holden cleare or dismissed. But if he fayle in his purgation, then *fictione juris* hee is taken to bee guiltie and to be reformed.

They shewe likewise a reason of diuersitie betweene the proceeding in the case *ex officio*, And that which is by suite of the partie, That is, *Licet nemo tenetur seipsum prodere, tamen proditus per famam tenetur seipsum ostendere utrum possit suam innocentiam ostendere, & seipsum purgare.* And a reason of that reason is added, becaule penaunces enjoyned by the ordinarie, are not taken in lawe to be *pœna* but *medicina*, or tending to the reformation of the delinquent. Th'example of others and satisfaction of the Church offended: And so they conclude vpon all their reasons, that the suspected are not to make scruple to discouer themselves after fame.

This being the true and onely course of proceeding by Ordinaries and Ecclesiasticall Iudges in causes criminall, where is then become the exacting of those general oathes so often vsed to aunswere all Interrogatories that shalbee



ministred, and that before notice or vnderstanding (for the most parte) of the cryme objected. And the extorting by oath of the ground and foundation of the inquisitiō from the partie conuented, doeth it not appeare by the resolution of these learned men, that the same haue no good or sufficient warrant by the lawe, howe long or much soeuer by colour & pretence of lawe and justice they haue bin practized or imposed.

And as concerning their proceedings *ex officio* to forced purgations approued (as they seeme to affirme) both by the law Ecclesiasticall and tytle of prescription, if we looke well thereto, and take good view thereof, what other thing shall we finde then harde and vniust dealing towards men, and great abuse of the Name and Maiestie of Almighty God, cloaked and shadowed neuerthelesse vnder the glorious and painted glosses of beautifull shewes and feyned pretences of purging of Prouinces, Reformation of delinquentes necessarie examples, discharge of publique trust, and satisfaction of the offended church, honest and honorable termes in deede, but ill applied to this purpose.

For firste, as concerning the iniustice offred vnto men, if it be a true and sounde principle or Maxime in lawe, not denied by themselves, That *Nemo tenetur seipsum prodere*, where should the benefite thereof be had or taken but in their Courtes and Cōsistories. But if it should be graunted that this rule faileth where a man is *proditus per famam*, doeth not that as a gloase confoundinge the text wholie and altogether destroy that rule or principle, except for some reliefe this narrowe shifte may be vsed. That the same neuerthelesse standeth in force where any other then the Ordinarie assumeth to proue that cryme.

But in this case also they haue so weakned this maxime, that scarcelie will it stande for a minome, affirminge (if I mistake them not) that the infamed must aunswere on his oath to other articles not principallie touching the verie crimes objected. For what should be meant by other articles but such as concerne circumstaunces and inducements to the cryme, And is not this to goe like the crabbe



oblique, and to proceede the same way, although not to treade the direct steppes? But why there should bee any distaunce betweene the suite or instance of the partie and the proceeding *ex officio*, I knowe not the reason. Alleadged therefore is this, Penance enjoyned by Ordinaries are not taken to bee *pæna* but *medicina*, what their lawe presumeth is not sufficient reason to prooue their lawe reasonable, but what they are in deed is to be weyed. And shall they be medicines onelie, where proceeding is *ex officio*? Or tend they in that case alone to the reformation of the delinquent, Th'example of others, and satisfaction of the Church? May not all this aswell bee veresied where the cryme is complained of, and punished at th'instance of the partie? And shall not penance although it bee but the standing in a sheete, as well as the standing on the pillorie, respect of publique shame and reproache (grievous and odious vnto all men) be accompted for a punishment? True it is, all corrections are or should bee medicines for the amendement of maners. But doeth it therefore follow that the same be no paines or punishments?

As concerning th'offence to God by the abuse of his Name and Maiestie, Haue we not learned before that to offer an oath vnto persons defamed in life and conuersation, and speciallie concerning the matter of his owne corrupt life argueth a lightnes and wante of good discretion in the Magistrate, who thereby wittinglie doeth minister an occasion of perjurie? And are not all those on whome these purgations are imposed, men greatlie defamed, and vehementlie suspected of the crymes objected, for as these Doctours affirme the law when secrete crymes by circumstances knowne abroad, are become vehementlie suspected, offensive and dangerous, then are they firste enquired of. The proceeding also by inquisition beginning vpon fame, proued not slenderlie, but by presentment vpon oath, or by deposed witnesses, being many honest, voide of malice, neighbours to the partie, and rendring a wise & sufficient reason of their knowledge concerning the same. And howe then may a Iudge in such a case with any good



conscience to Godward, or to the satisfaction of his church, force an oath vpon such a one for the finall ende of the cause? Is not the perill and presumption of perjurie very great and pregnant? Knowe we not that all, or the moste part of men liking the counsell (*dedecus magis quam periculum vites*) will rather hazard their soules then put their bodies to shame and reproach: presume the lawe neuer so much that after fame they should not make scruple to disconuer them selues. If the like course of purgatiō should be vsed at the common lawe vpon Indightmentes of felonie, or other criminall causes, what doubt were to bee made, but that perjurie in short time would ouerflowe the whole lande: and shall we not thinke, that the same is not frequent in these kindes of purgations? But say they, the partie is not trusted alone, he bringeth with him his many compurgators, who depose also *de credulitate*, waying his feare of God and former conuersation. Be it so, the matter thereby is no whit amended, but rather made worse and impaired. For what doe those compurgators but by lending their oathes, iustifie in effect him to be honest, whom fame and the former deponentes haue proued to be dishonest, and verie neare (the circumstances considered) conuined of the crime objected. Why rather doe not these Ordinaries which challenge and assume to them selues the goodlie name and tytle of spiritual men, if they respect the honor of God, and regard the soules of men, free the people from these pernicious oathes and deadlie purgations, and proceede to their sentence of condemnation, not by feyned offices and fictions of lawe, but by good prooffe and lawfull witnesses? And againe, absolue the partie defamed, where such sufficient prooffe doeth faile them, why should they thinke much to offer to the laitic in their Ecclesiasticall Courts, the like good measure, and vpright & sincere justice, that they themselues finde & obtaine in the courts temporall of this Realme; Where neyther they nor any other are forced *ex officio Iudicis*, by straying oathes and strong purgations, not healthfull but hurtfull to bewray or accuse them selues. Perhaps this counsell would  
be



be receyued, if it were as profitable as good and honest, but according to the proverbe *auro loquente tacendum est*. For it is no small gaine and lucre that dailie riseth and accreweth to the Cleergie and Courtes Ecclesiasticall, by flander, fame, rumour, and false report: in respect whereof these faire names of Office and discharge of publique duetie, are so cunninglie pretexted, and these poysoninge purgations so daungerouslie giuen for preseruatiues. A matter being since well knowne vnto the worlde, and by the Princes of Germanie in the Counsell of Noremburg, as *Carolus 5* among many other abuses and corruptions, moſte monſtrous, complained of to this effecte: It happeneth oftentimes ſay they, that men and women through ſiniſter and false reportes and flanders, are brought before the Officiall or Ecclesiasticall Iudge, as men guiltie, and ſhall not be declared innocent before they haue cleared themſelues by an oath, which purgation ſo made, they are reſtored to their former eſtimation. And albeit the dammages and coſtes ought to bee repaide vnto ſuch as be ſo falſelie accused, yet are the innocentes them ſelues forced to paye two Gilders and a quarter for their letters of abſolution. And this is the cauſe why the Officialls and other Ecclesiasticall Iudges, doe ſo greatlie followe the action of ſuch vnlawfull, falſe, and flanderous accusations, challenging the hearing thereof onelie to them ſelues. Which thing no doubt (ſaye they) redowneth to the great and moſt ſingular hurt and detriment of all men. For oftentimes it happeneth that Women falling together in contention through anger, hatred, or ſome other affection, doe ſpeake euill of, or flander one another, and outrage ſo much, that the one oftentimes accuſeth the other eyther of Adulterie or Witcherie: which being brought before the Officiall, ſhee which through anger had ſo flandered the other, is forced by an oath to excuſe and purge her ſelfe, that what ſoever injurious or flanderous worde ſhe had ſpoken, came not of any deliberate purpoſe or intent, but through wrath and diſpleaſure. In like manner th'other which is accuſed eyther of adulterie or forcerie, is commaunded by an oath



to declare her innocencie: so that it is euident vnto all men, that in such cases whether they bee guiltie or not guiltie, they must sweare if they will keepe their good name and fame whereby not onely the vnlawfull lucre of gaine and money is sought, but also wilful perjurie forced, &c. Thus these honorable persons you see haue made it cleare what is chiefelie intended by these canonicall purgations, pretende the Cleargie what soeuer they will, and howe such forced oathes are not onelic offensive vnto God, but injurious also vnto men. Therefore leauing these men to who the fauour of gaine is so sweete, together with their famous lawe, the matter which wee endeuour to prooue is, that those generall oathes and oathes *ex officio* publique heretofore much practized by Ordinaries and Ecclesiasticall Iudges, are altogether vnlawfull (whether by the Canonickall sanctions or lawe cannon, I care not) but by the lawes of God and of this Realme. And therefore since we haue sufficientlie spoken of the lawe of God, nowe least peraduerture it may be saide, that such Catholique oathes are warraunted by the common lawes or statutes of this Realme, or by the vse and practise of some Courtes of Iustice, therein let vs consider hereof also, and deliuer both our lawes and the Iustice of our land from so foule a flaunder.

Concerning the common lawes of this Realme, we may finde an oath diuerslie allowed of and vsed in causes of suyte iudiciallie depending. But such a generall oathe or such like *ex officio* at any time eyther offred by Magistrate or taken or made by subject of this lande, by authoritie of the common lawe, can neuer be proved, I am sure, eyther by good recorde or sounge reporte of the same. Long it were and tedious to remember the particular cases, when and where an oath is required by the lawes and statutes of this Realme. But this may be sude in generall, and that truelie, to the great honor and highe commendations of our gouernement, that the same common lawes haue not imposed or appointed an oathe to bee vsed otherwise then according to the right institution thereof, & the god-  
lie



lie rules before remembred: yea moreouer this may trulie be affirmed, that the common lawe of this Kingdome, yea the common wealth it selfe hath euer rejected and impugned as a thing vnlawfull and injurious, this maner of swearing, whereof we nowe intreat, as by that we shall hereafter say, may euidentlie appeare.

Touching the oathes imposed or admitted at the common lawe by Iudges or Magistrates (for of them onelie we are to speake.) First it is vsed as by good reason in all Courtes of Iustice established for determination of causes in suite or controuersie, eyther betweene the Prince and subject, or the subjectes them selues, to require an oath of all such as are called or produced to testifie theit knowledge concerning the matter or point in yssue, whereby the trueth may appeare, and the cause receyue an ende.

The defendent also in diuers personall actions voluntarie offering an oathe for his cleare discharge, is admitted by course of the lawe therevnto, which maner of proceeding is termed the doing of his lawe, and seemeth to haue bene grounded vpon the iudicialles before rehearsed, giuen by God vnto his people the Isralites, as by the obseruation of the cases hereafter mentioned, may be gathered. For in an action of debt brought for money due by reason of some simple cōtract, or in an action of detinue of goods and chattelles, the oath of the defendent in the one case, that he oweth not the money, and in the other, that hee deteineth not the things required, is allowed for a finall ende and barre vnto the pleadant. For in the former case the repayment of the money may be priuate and in secrete, & so in the other the deliuerie of the goods. And although the baylment and deliuerie of the pleadaunt goods to the defendent were by the handes of a third person, or testified by writing, yet these are no causes to put the defendent from his oath, or wager of his lawe, for asmuch as the answer is not to the baylment or deliuerie, but to the detainer or withholding, and in the action of debt, although the defendent eyther hanging the action or otherwise had confessed the contract, yet is he to be admitted to his lawe

*Wager of  
lawe.*



or oath, in so much as the point in suite is not the contract  
 7.H.4.fo.7. but the debt.

9.E.4.fo.24

But in an action of accompt supposinge the receipt by the hands of a stranger or thirde person, the lawe is otherwise: for here the thing deliuered is not preciselie in demaunde, but an accompt onelie thereof required. And the receipt being the cause of action to which a thirde person is priue as a witnes (the oath of the defendent as a thinge not of necessitie) is rejected. For that reason was the defendent put from his wager of lawe. Anno 31. Ed. 1. where the case was this: An action of detenewe was brought for a Challice, the defendent pleaded howe the pleadaunt deliuered the same in gage for vj. markes, and that vppon the repayment thereof he was readie to deliuer the Challice, the pleadent replying that he had repayed the money by the handes of one such, the defendent offering his oath to the contrarie, was not admitted therevnto, inasmuch as there was a witnes of the repayment, by whose testimonie the trueth might be knowen.

And as the common lawe is thus on the part of the defendent, so is it likewise for the pleadant, comminge as it were in place of a defendent. Therefore Anno 21. Ed. 3. fol. 49. the case was that the defendent vppon his accompt would haue discharged him selfe by certen rallyes, and so by his oath continued the charge against the defendent. But Anno 29. Ed. 3. the defendent in accompt alleadged before the Auditors, payment to the pleadant by the hands of another, and the pleadent offering his oath that hee had not receyued the money, was in respect of the third person denied to wage his lawe. And the good discretion and consideration which the lawe vseth in the allowing and admitting of wager of lawe, is not to be forgotten. Whiche lawe (least men of light credite or doubtfull faith, should take an oath) suffereth no man to doe his lawe, but such onelie as is able to bring with him 11. other persons of ripe yeres and of good name, to depose with him, that they thinke he sweareth truelie.

Neither are th'one parties or th'other in any personal action



tion by the courses of the common lawe suffered to cleare themselves by their oathes where they are charged, eyther by their lawfull writing or matter of recorde, for that these are testimonies and proofes sufficient wherevnto faith and credite ought to be giuen, much more might bee saide in such particulars, but these may suffice to shewe howe in suites for goods, chattels, debtes, or personall dueties, the common lawes of this Realme admit no ydle, vaine, suspicious or vnneccessarie oathes, neyther compell any man to sweare concerning them, but vppon cause allowe of the pl. and desertes voluntarie and necessarie oath for an ende of the controuersie.

As touching the causes and controuersies for landes and inheritaunces depending in suyte, eyther in admitting or requiring of oathes, some fewe cases there be: Neuertheless where an oath for them is vsed, As if a *Precipe quod reddat* be brought of lande wherein the tenaunt was not lawfullie sommoned, he may vpon returne of the proces of graund cape, wage his lawe for none sommons, and thereby (as not well executed) abate the demaundentes writ, in which case an oath seemeth rightlie to bee admitted, since the cause is both of weight and necessitie to the tenaunt, this being the onely way to relieue him against the vnttrue returne of the Sherife, whereby his lande for want of apparaunce was to bee recovered against him. For as the lawe seemeth to way a triall of this sommons by 12. men is not allowable. And although it may bee saide, that the tenaunt vpon his losse by default might haue a writ of deceit, and recouer againe his lande, yet that often times falleth out to be a faint remedie, the death of such as were returned sommoners depriuing him of that aduantage. In the case also of deceit vpon a recouerie by default, the sommoners, viewers, and perueors, are iudiciallie examined by oath, whether they haue duellie accordinge to the lawes of the lande, executed and perfourmed that whiche appertayneth vnto them, who in this case are vsed but as witnesses to search and sift out by them the good or euill dealing of the Sherife by whom the execution of the writ

33.H.6.fo.



and procelle was committed. In like maner, if the plaint.  
 41. Ed. 3. fo. in a *scire facias* recouer by default, & the defendent bring  
 this action of deceit against the Sherife, the bailife and  
 the partie that sued execution of the lande, procelle shalbe  
 awarded against the supposed garnishers, and vppon their  
 apparaunce they shalbe examined (and that by oath) con-  
 cerning the maner of the garnishment, and the same bee-  
 ing founde insufficient, the plaintife shalbe restored to his  
 lande with the profites meane.

We may finde also in such reall actions an oath required  
 in another maner, but yet to good purpose, that is, to take  
 away vnnecessarie delayes of iustice. For if the tenaunt in  
 a *praeiudice* of lande will cast an Essoyne of the Kings seruice,  
 the Essoygner shall sweare, and that directlie, the same to  
 be no feined excuse, otherwise the Essoyne shall not be al-  
 lowed. Some fewe other particular cases of like nature  
 may peradventure be shewed where an othe is admitted or  
 required in these reall actions, but none I am sure tending  
 to anie such purpose as these oathes commaunded and en-  
 forced *ex officio*.

*Criminall  
 causes.*

In criminall causes and suites, whereby eyther the losse  
 of life, libertie, member of the bodie, or good name, may  
 ensue (which among worldlie things are most deare and  
 pretious vnto men) the common lawes of this lande haue  
 wholie forborne (and that for just respectes) to vrge or im-  
 pose an oath vpon the accused. For in wisdom it was  
 foreseene that the frailtie of man for the safetie of life, the  
 preservation of libertie, credite, and estimation would not  
 spare to prophane euen that which is most holie, and by  
 committing sinfull perjurie, cast both soule and bodie in-  
 to eternall perdition.

This knewe the subrill serpent our aduersarie full well  
 in generall, although he were deceyued in the particular.  
 when as he saide vnto God concerning the holie man Iob:  
 Iob cap. 2. *Skinne for skinne, and whatsoeuer a man hath, will hee giue  
 for him selfe and for his life, but stretch out thy hande (sayth  
 Sathan) and touche his bones and his fleshe, and see if he will  
 not then blasphemme thee to thy face.*

Moreo-



Moreover, euerie wise Magistrate may well conceyue vpon howe weake and feeble a foundation he shall ground his sentence, trusting to such an oath, when before hande the suspition and presumption of perjurie is so pregnant. Therefore in causes capitall or otherwise criminall, these our lawes neyther vrge by oathe nor force by torment any man to accuse or excuse him selfe, but rejecte the oath as vnbeseeeming a well gouerned state or common wealth: And condemne the torture as a thing most cruel & barbarous, wherof although they neede no other prooffe the the dailie practize and pceedinges against parties suspected of such offences, yet concerning the inquisitions by torture, we may see the same affirmed by that learned Iudge Maister *Fortescue* in his commentaries of the Pollicie of this Kingdome, And for th'other there are sufficient authorities in the reportes of the lawes them selues: therfore in the booke of Assizes it appeareth, that diuers Iurours were challenged as lesse indifferent, some for matters that founded to their reproach and dishonestie, as that corruptly they had taken money of one of the parties in the suite, whervpon it was ordered by the Iustices, that such as were challenged for causes not dishonest, should bee sworne to declare the trueth, the other for the reason aforesaide, not to be examined at all, but the challenge to be tried without their oath, The same lawe is againe reported vnto vs Anno 49. Ed. 3. fol. 1. Vpon the like reason is the resolution of the chiefe Iustices & of the Iudges *Saunders* and *Whid-*  
*don*, That if a bill of perjurie committed in the Chauncery against the forme of the statute made in the fiste yeare of her Maiesties reigne, were exhibited in the same Court, that the defendent should not be compelled to make answer vpon his oath eyther to bill or intertogatories, but that the parties ought to descende to yssue, and the triall to be had by Iurie in the Kings Benche. I shall not neede to spende time in declaring after the parties in suite haue ioyned yssue triall by Iurie howe many wayes an oath is vied about the triall of such matters of fact, as the oath of Iurors them selues. and of their triars vpon challenge, or to  
 speake

49. Ed. 3.

12. R. Eliz.



speake any thing of the oath to be ministred vnto such as require the suertie of peace, neither to discourse of the doing of homage or fealtie by the tenaunt to the Lord, since these and such like are well known to euery one, although but of meane judgement, to bee necessarilie vsed for the better administration of Iustice, and assuraunce of dueties, making nothing at all for those phantasticall and officious oathes and examinations, proceeding rather *ab officio* the verbe, then *ex officio* the nowne.

Neyther is it necessarie to set forth at large where and in what particular cases Oathes are appointed by Actes of Parliament of this Realme, as to remember the diuers Oathes of Bishops, Counsellours, Iudges, Magistrates, Officers, and Ministers of Lawe and Iustice. The oath ordeined for the maintenaunce of the supremacie Royall, and abolishing of forreine iurisdiction. The power of examination by oath by the statute of Anno 5. H. 4. and manie others, for that by perusall of the statutes, the same may vnto him that will searche, easilie appeare. Vpon consideration of all which actes of Parliament, beeing in force, it may truelie be affirmed that there is not so much as a bare shewe or shadowe of matter to giue credite or allowaunce to these infinite wrested and extorted oathes *ex officio*.

The statute  
against heresie  
1. H. 5.

But it may be that some man in the defence of the cause and for allowance of those oathes will alleadge the twise damned and repealed statute made vpon the sinister suggestion of the Cleargie Anno 2. H. 4. cap. 15. Which bloodie and broyling lawe gaue authoritie to Diocesans, to cause the persons defamed or euidentlie suspected of supposed heresie, to be arrested, and vnder safe custodie to be deteyned in their Prisons, till they of the articles laide to their charge, did canonicallie purge them selues, or els abjure it according to the lawes of the Church. And did appoint the proceeding and determination of the cause against the arrested, to be according to the effect of the law and canonicall decrees. For aunswere wherevnto I saye, that although the sword by that statute lawe was committed into the handes of madde men, and the scellie lambes deli-



deliuered ouer to the greedie and deuouring wooldes, yet doeth it not appeare by any apparaunt or expresse wordes of that law, that any authoritie was therby giuen or meant to be giuen to Ordinaries or Iudges Ecclesiasticall, to impose any such generall oathe, or otherwise to compell by oath the prisoner to become his owne accusor, for that (and especiallie in cases of life and death) had bene directly against the lawes and justice of this lande. But if it bee alleadged, that the same was *tacite* and *inclusiue* allowed by those wordes of canonicall sanctions or decrees, and that there be any such, yet the same decree beeing against the lawes and decrees of God, as before is proued, that statute was therein no binding lawe, neyther gaue sufficient warraunt to put in execution any such corrupt course of proceeding, since all lawes and ordinances of man whatsoever, being repugnaunt to the lawes of God, are meerely voyde and of none effect, as the learned Saint *Germaine* in his booke of *Doctor and Student* hath wel obserued, where he saith, *That euerie mans lawe must bee consonant to the lawe of God.* And therefore the lawes of Princes, the commandements of Prelates, the statutes of Communalities, ne yet the ordinances of the Church, is not righteous or obligatorie, Except it be consonant and agreeable to the lawe of God.

But as concerning that statute, will you heare what is declared by Parliament Anno 25. H. 8. The subjects of this Realme at that time lamentable shewe vnto their Soueraine Lord and King, howe that statute was impetrate & obtained (I vse the wordes of the lawe) by the suggestion of the Cleargie of this Realme, not declaring or defining any certen cases of heresie, that those wordes (canonicall sanctions or decrees) were so generall, that vnneth the most expert and best learned men of the Realme (diligently lying in wayte vpon him selfe) could eschewe and auoyd the penaltie and daunger of that act. And canonicall sanctions if he should be examined vpon such captrious Interrogatories (note I pray you) as is and hath bene accustomed to bee ministred by the Ordinaries of the Realme in

Ca. 14.

E

cases



cases where they will suspect any person of heresie.

They moreouer affirme, that it standeth not with the right order of justice nor good equitie, that any person should be convict & put to the losse of his life, good name, or goodes, vnlesse it were by due accusation and witnesse, or by presentment, verdict, confession, or processe of out-lawrie: Declaringe moreouer, that by the lawes of the Realme for treasons committed to the perill of the Kinges most Royall Maiestie, vpon whose suertie dependeth the wealth of the whole Realme, no person can ne may be put to death, but by presentment, verdict, or processe of out-lawrie: and therefore not reasonable that any Ordinarie by any suspition conceyued of his owne fantasie, without due accusation or presentment, should put any subject of this Realme, in the infamie or slaunder of heresie, to the perill of life, losse of name, and goods. They further shewe that there may be heresies and paines and panishmentes declared and ordeined in and by the canonicall sanctions, and by the lawes and ordinances made by the Popes and Bishops of Rome, and by their authorities, for holdinge, doing, preaching or speaking of things contrarie to the saide canonicall sanctions, lawes and ordinances, whiche be but humane, mere repugnant and contrarious to the Prerogatiue of the Kings Imperiall Crowne. Regall jurisdiction, lawes, statutes, and ordinaunces of the Realme, by reason whereof the people of the same for obseruing, maintayning, defending, and due executing of the Kinges lawes, statutes, and prerogatiue Royall, by authoritie of that act, may be brought into slaunder of heresie, to their great infamie and daunger and perill of their liues. So wee see first howe the craftie and subrill Cleargiemen were the procurers of that statute lawe, to the ende that they might execute their crueltie, and howe vnder cloked and couert termes of canonicall sanctions, they vnjustlie vsurped jurisdiction ouer the people, ministring vnto them captious & snarling Interrogatories. And (as it should seeme by the histories) vpon oath contrarie to the true meaning of the lawe and law makers, and against the right order of justice and



and all good equitie: impugning thereby the Royall Prerogative, th' Imperiall Crown, the Princelie Scepter, lawes and Pollicie of this Kingdome. In consideration whereof, and to take from them all colour of lawe positive of this Realme, that statute was then repealed, and a newe forme of enquirie of heresie by indightment, presentment or due accusation by two lawfull witnesses at the least, was established.

And it is further to be noted, that although the Statute made Anno 31. H. 8. commonlie called the statute of sixe articles, was a verie streight, fore, extreme & terrible act, as the statute of the repeale thereof speaketh, yet finde wee 31. H. 8. c. 14 not by that lawe, or any other, these generall oathes or examinations by oath *ex officio* of persons suspected or accused for heresie or other cryme Ecclesiasticall, to be enacted 1. Ed. 6. c. 16 or allowed of, but rather by the courses and fourmes of enquire and triall otherwise prescribed in this and other statutes, the same is rejected and disallowed whollie as vnjust and full of iniquitie. For by this statute of sixe articles, commissions are appointed to be directed to the Archb. or Bishop of the Diocesse, and to his Chauncellor or Commissarie, and such other as the Kinge should appoint, giuinge them power to take information and accusation, (not by oath of the partie conuented) but by the oathes & depositions of two able and lawfull persons at the least, or to enquire by the oathes of xij. men. Giuing also to the Ordinaries power and authoritie to enquire in their visitations and Senis, and to take accusations and informations as in forme aforesaide, and not otherwise. The maner also of processe against the persons indighted, accused or presented, is there prescribed. And the forme of ptoceedinge vpon apparaunce of the partie appointed to bee not according to those vnjust examinations by oath *ex officio*, but accordinge to the lawes of the Realme, and th' effect of that act.

And although at that tyme this statute lawe seemed just and equall, as concerning the maner of enquirie and trial, yet time (disclosing all thinges) made it appeare that the



same was not false, in respect that diuers secret and vntre accusations and presentementes might bee, and by all likelihood were maliciouslie conspired, and therefore it was enacted Anno 35. H. 8. cap. 5. That no person should bee arraigned or put to triall for or vpon any accusation, information or presentment, concerning any of the offences mentioned in the statute of 6. articles, but onely vpon such presentementes and indightements as shoulde bee founde and made by the oathes of 12. men or more, &c.

These things standing thus, howe may any man iustifie or defende (much lesse practize) those generall oathes or examinations by oath *ex officio* by any statute lawe of this Realme, being by them not onelie rejected, but vtterlie condemned as not standing with the right order of Iustice nor good equitie, especiallie the statute made Anno 25. H. 8. beinge in force and limitinge vnto Archb. and Bish. none other iurisdiction then such as they may vse without offence to the Prerogatiue Royall and the lawes and customes of this Realme. Of which lawes and customes the common lawe is no part or portion. And as a well-willer I would aduise all Ordinaries and such as exercise Ecclesiasticall iurisdiction, especiallie hauing taken the oathe ordeyned for the maintenaunce of the Supremacie Royall, (wherein they sweare to assist to their power, and defende all iurdictions, Priuiledges, Preheminences and authorities graunted or belonging to the Queenes Highnes, her heyres and successours, or vnited and annexed to the Imperiall Crowne of this Realme) to take heede that they attempt not to put in practize or exercise any such Oathes or examinations *ex officio*, least happilie they bee not onely founde thereby to be impugnors of the Royall Prerogatiues, but discredited farther by the breach of their oath.

The Kings  
commission

If it be saide (for what will not be moued for a defence), that the King heretofore gaue in those commissions besides the lettre and meaning of the statute of 6. Articles, power and authoritie by expresse words vnto the Commissioners Ecclesiasticall to examine by oath the persons accused or presented. As that is not likelie, neither as I suppose can

be



be proved, So (admitting it were true, and that such kind of oathes were consonant to the lawe of God) yet were the same no sufficient or lawfull justification, inasmuch as we haue prooued, and further shal prooue such examinations and inquiries vpon oath, to be injurious both to the Prince and people of this Realme, and to impugne our gouernement and forme of Iustice. In which cases the Kings graunt or commission is of no force in lawe. For as *Bracton* well hath written, *Potestas Principis iuris est nō injuria, & cū ipse sit author iuris, non debet inde injuriarum nasci occasio unde jura nascuntur.* That the King by his Commission or graunt, or otherwise the by Parliament, may not change or alter the lawes of this Realme, nor the order, maner or forme of administration of Iustice, is rightlie also noted vnto vs by that graue and learned Iudge Maister *Fortescue*, saying: *Non potest Rex Anglia ad libitum suum leges mutare Regni sui Principatu, namque nedum Regali sed & politico ipse suo populo dominatur.* And by the booke also of Anno 11. H. 4. where it is agreed that neither the King by his graunt, nor the Pope by his Bulles (for all his triple Crowne) can change or alter the lawes of the lande, wherunto concurre diuers other bookes of the report of the lawe. Worthie also of remembraunce is that saying of Iustice *Scroope* Anno 1. Ed. 3. fol. 26. *If the King (layeth hee) commaunde any thing impossible that which the lawe will in the case must be done: if he commaunde any things contrarie to lawe, his Iustices ought not to doe it.* Anno 42. Ed. 3. There was a Commission awarded out of the Chauncerie to apprehende a certen subject of this Realme, and to seize his goods and chattells, no enditement, suite of partie, or other due processe of lawe precedent, and the same was by the Iustices holden to be altogether voyde, as a matter against the Pollicie of the Realme, and maner of execution of justice. Likewise it appeareth in the same yeare, that a writte proceeding from the Chauncerie, to enquire of Chaunperties, Conspiracies, &c. whereby one of the Kings subjectes stood indighted, was by Iustice *Knevet* vpon the resolution of the rest of the Iudges, damned & ad-  
E. 3. judged.



same was not false, in respect that diuers secret and vntre accusations and presentementes might bee, and by all likelihood were maliciouslie conspired, and therefore it was enacted Anno 35. H. 8. cap. 5. That no person should bee arraigned or put to triall for or vpon any accusation, information or presentment, concerning any of the offences mentioned in the statute of 6. articles, but onely vpon such presentementes and indightements as shoulde bee sounde and made by the oathes of 12. men or more, &c.

These things standing thus, howe may any man iustifie or defende (much lesse practize) those generall oathes or examinations by oath *ex officio* by any statute lawe of this Realme, being by them not onelie rejected, but vtterlie condemned as not standing with the right order of Iustice nor good equitie, especiallie the statute made Anno 25. H. 8. beinge in force and limitinge vnto Archb. and Bish. none other iurisdiction then such as they may vse without offence to the Prerogatiue Royall and the lawes and customs of this Realme. Of which lawes and customs the common lawe is no part or portion. And as a well-willer I would aduise all Ordinaries and such as exercise Ecclesiasticall iurisdiction, especiallie hauing taken the oathe ordeyned for the maintenaunce of the Supremacie Royall, (wherein they sweare to assist to their power, and defende all iurdictions, Priuiledges, Preheminences and authorities graunted or belonging to the Queenes Highnes, her heyres and successours, or vnited and annexed to the Imperiall Crowne of this Realme) to take heede that they attempt not to put in practize or exercise any such Oathes or examinations *ex officio*, least happilie they bee not onely founde thereby to be impugnors of the Royall Prerogatiues, but discredited farther by the breach of their oath.

The Kings  
commission

If it be saide (for what will not be moued for a defence) that the King heretofore gaue in those commissions besides the lettre and meaning of the statute of 6. Articles, power and authoritie by expresse words vnto the Commissioners Ecclesiasticall to examine by oath the persons accused or presented. As that is not likelie, neither as I suppose can

be



be proved, So (admitting it were true, and that such kind of oathes were consonant to the lawe of God) yet were the same no sufficient or lawfull justification, inasmuch as we haue prooued, and further shal prooue such examinations and inquiries vpon oath, to be injurious both to the Prince and people of this Realme, and to impugne our gouernement and forme of Iustice. In which cases the Kings graunt or commission is of no force in lawe. For as *Bracton* well hath written, *Potestas Principis iuris est nō injuria, & cum ipse sit author iuris, non debet inde injuriarum nasci occasio unde jura nascuntur.* That the King by his Commission or graunt, or otherwise the by Parliament, may not change or alter the lawes of this Realme, nor the order, maner or forme of administration of Iustice, is rightlie also noted vnto vs by that graue and learned Iudge Maister *Fortescue*, saying: *Non potest Rex Anglia ad libitum suum leges mutare Regni sui Principatu, namque nedum Regali sed & politico ipse suo populo dominatur.* And by the booke also of Anno 11. H. 4. where it is agreed that neither the King by his graunt, nor the Pope by his Bulles (for all his triple Crowne) can change or alter the lawes of the lande, wher-vnto concurre diuers other bookes of the report of the lawe. Worthie also of remembraunce is that saying of Iustice *Scroope* Anno 1. Ed. 3. fol. 28. *If the King (sayeth hee) commaunde any thing impossible that which the lawe will in the case must be done: if he commaunde any thinge contrarie to lawe, his Iustices ought not to doe it.* Anno 42. Ed. 3. There was a Commission awarded out of the Chauncerie to apprehende a certen subject of this Realme, and to seize his goods and chattells, no enditement, suite of partie, or other due processe of lawe precedent, and the same was by the Iustices holden to be altogether voyde, as a matter against the Pollicie of the Realme, and maner of execution of justice. Likewise it appeareth in the same yeare, that a writte proceeding from the Chauncerie, to enquire of Chaunperties, Conspiracies, &c. whereby one of the Kings subjectes stood indighted, was by Iustice *Knevet* vpon the resolution of the rest of the Iudges, damned & ad-



judged voyd in respect that such matters are not inquireable by writ, but by Commission.

But it wilbe said of some (I verily suppose) that although neither the common lawes, nor statutes of this Realme, nor the Kings commission, doe or can warrant such maner of oath and examinations *ex officio*, yet the publique practice and vse of the honorable Courtes of Starchamber & Chauncerie, the one in causes criminall, the other in suites ciuill of equitie and conscience concurring in one forme of taking answers and examinations by oath, doe fortifie and confirme the thing which wee impugne. Whiche speach as it may seeme at the first to giue some coulor and shewe of credit to their cause, so vppon consideration had and due comparing the one with the other, it will soone appeare to be but a vanishing smoake, and shadowe voyde of substance. For first, if it should bee graunted, that such kinde of oathes and examinations were vsed in the Courts of Starchamber and Chauncerie, yet would it not followe that the same might be practiced in the Courtes and Consistories Ecclesiasticall, vnlesse the like allowance thereto and consent of the whole Realme might be prooued also. And who knoweth not howe weake a profe, examples, and presidentes are where an expresse lawe or certen policie is to the contrarie. Therefore it is well said in the ciuill lawe, *Ius non ex regula sumatur, sed ex jure regula fiat*. By better Logick might they conclude thus: All answers are made vpon oath in the Kings Courtes of Starchamber & Chauncerie, Ergo the same course may be vsed in the Courtes of the Kings Bench and common place, which neuerthelesse were an absurd conclusion. It is verie true in deede, that these honorable Courtes of Starchamber and Chauncerie proceede not to the tryall of causes by Iurie, after the manner of the common lawes of this Realme, but giue their judgements and definitiue sentence vppon the answer and examination of the defendent, affirmed by his corporall oathe, and vpon the depositions of witnesses. But who hath euer seene in these Courtes any subject of this



this lande, in a cause concerning him selfe, brought forth and compelled to depose or make aunswere vppon his oath, no bill of complainte or information formerlie exhibited against him. Nay on the contrarie, these Courtes obseruing the due forme of Iustice, enforce no man to answere, butt where hee hath a knowne accusor, and perfect vnderstandinge of the cause or cryme objected, and therewithall is permitted to haue a coppie of the bill of complainte or information (beeing not *ore tenus*.) And allowed moreouer both tyme conuenient, and counsell learned well to consider and aduise of his oathe and aunswere. And if his aduersaries complaint bee either insufficient in forme or matter, or such as the Court hath no jurisdiction to determine the defendent vppon demurrer, without oathe is dismissed, and that with costes. And admitt the accusation, such as euery way is aunswerable, yet if the Interr. ministred, bee impertinent to the matter of complaint, the defendent without offence to the Court, may refuse to make aunswere to the same. What similitude or likenes then is there betweene the oathes and examinations vsed in these honorable Courtes, and those constreiners *ex officio*, since the former some bee orderlie taken in Courtes of Iustice, th'other without all course of judgement, th'one where pl. and complaint are manifest, the other where neyther accusor nor matter of accusation doe appeare, the one oath made vppon certen knowledge and good aduise, the other soddenlie without all discretion vpon vncertaine demaundes, the one wisely restrained to certen limittes and boundes, the other foolishlie wandringe at the doubtfull will of a flie and subtill apposer. Vpon the one the deponent aunswereth to the accusation of his aduersarie, by the other hee is compelled oftentimes to bee his owne accusor and condemner: the one enquireth an aunswere to matter in fact, done eyther to the injurie of some priuate person, or hurte of the publique state, the other constreyneth the reuealing of wordes, deedes, and thoughtes, though neuer offensive to any.

Than



The praeface  
of the clear  
gic.

Than since it is apparaunt that these manner of oathes are altogether mere straungers to our pollicie, and not so much as once countenaunced by any lawe, custome, statute of Court of this Realme: Howe then & by whose meanes hath this alien heretofore intruded as a troublesome guest into the house of the common wealth? This partlie as before, hath bene declared with some griefe of minde, by that godlie seruant of Christ *Iohn Lambert*, who noteth the papisticall Cleargie and religious men of his time most irreligiouslie to haue practized the same. And no doubt the Prelates of former ages, sayning and pretendinge such oathes to be necessarie for the gouernment of the church, and to purge the Prouince of euill men, as aforesaide. But in trueth, finding it a fitt instrument to maintaine the Romishe Hierarchie, and to tyrannize ouer the consciences of good men, most impiouslie violating the lawes both of God and man, imposed this maner of corrupt oath vppon the people, and no mervaille, since there was no euil or mischief that could bee deuised, either against the Prince, people or pollicie of this lande, which these kinde of our Prelates haue not attempted and put in practize. For firste disguising themselves vnder the visor and maske of hypocritic and feined holines, and making marchandize of all thinges (euen of heauen and hell) purchased and acquired in short time (such was the blinde deuotion of the superstitious laitie) great and large Seignories, Landes and possessions (the verie mother and nource of pryde, presumption and vaine pompe of this worlde) And not so satisfied, but vnsatiablie and most ambitiouslie lusting after rule & dominion, spared not against their due alleadgance, to enfeest euen the Kings and Princes of the lande. Lett the contention and strife of *Anselme*, Archbishop of *Canterburie* with King *Rufus*, the manifolde practizes of *Thomas Becket* against King *Henrie the seconde*, the tragicall life, and pitifull ende of King *Iohn*, occasioned chieflie by the malicious meanes of the Archbishop *Stephen Langton*, the treason of Archbishop *Arundell* against his soueraigne Lorde and King *Richard the second*, and the pryde and insolencie of



of Cardinall *Woolsey* against that renowned Prince Kinge *H. 8.* among others, be sufficient testimonies in this behalf. And as these pontificall Prelates with others more, puffed vp in swelling pryde and ambition, strake at the head, so the crewe of that Antichristian Cleargie ceased not from time to time to wrastle and make warre euen with the sinewes and strength of the bodie politike of this Realme, the lawes I meane and customes of this kingdome, beinge the principall stay and stoppe to their insolent and ambitious attemptes, endeououring them selues to writhe out and exempt them selues from their due subiectiō to the same, sometimes againe encroching and vsurping the right and iurisdiction of the Kinges courtes, couetinge to drawe all causes into their costlie and lingring Consistories. And oftentimes bringing in (to the prejudice both of the Prince and the people) forreine decrees and constitutions, with the corrupt Canons and ceremonies of the accursed sea of Rome. For prooue whereof, lette the particular examples hereafter mentioned, serue, as a few amongst manie.

The Pope (sayeth *Polidore Virgill*) made a lawe in the Counsell of *Lyons*, that the Cleargie should not bee taxed without his leaue or commaundement: which lawe of immunitie, although it were of no force to binde within this Realme, for that the same is not subject to any foreine made lawes or constitutions not suffered by the King, and voluntarilie accepted and vsed by his people, as is expresse declared by the statute made Anno 25. *H. 8.* cap. 21. yet see the good disposition and obedience of the Cleargiemen of this Realme in the time of King *Ed. 1.* which Churchmen with great obstinacie refused to paye the subsidie graunted to the King. *Robert*, then Archbish. of *Canterburie* (head & primate of that faction) wickedlie abusing this text of holie scripture to serue his rebellious intent, *obedire oportet Deo magis quam hominibus*, The Pope and his pурсe being his best beloued Gods: How much better and more Bilhoplike might he haue remembred, *Dare qua sunt Cesaris Cesari, & qua sunt Dei Deo*. That holy saint *Hugh*,



sometimes Bishop of *Lincolne*, related amongst the Ro-  
 mish Gods, puffed vp with the like arrogancie in the time  
 of the seuerall Reignes of King H. 2. and Richarde the 1.  
 and of King Iohn; denied the payment of tribute and sub-  
 sidie, blustering and puffinge out: moreouer like *facus* in  
 his denne his smokie blastes of curse and excommunica-  
 tion against the Kings collectours, A notable example of  
 humilitie and obedience in a Popeholie Bishop. It is saide  
 also by Maister *Frowick* Anno 10. H. 7. That the Cleargie  
 had a Constitution, that no Priest should be impleaded by  
 the common lawe of this Realme, for any cause whatsoe-  
 uer: whether he saide truelie therein, lette the Canonistes  
 judge. But certain I am, the whole rabble of that Romish  
 Cleargie, did from time to time their best endeouour to  
 make them selues lawlesse altogether, as by the grieuances  
 exhibited by the Princes of Germanie at the Counsell of  
*Norrenberg* in the time of the Emperour *Charles* the fiste,  
 may well appeare. And this our haughtie *Hugh* of *Lin-*  
*colne*, cyther emboldened by such a Cannon, or of his own  
 free courage, as a lustie champion of that irregular confe-  
 deracie, drewe out his woodden dagger of excommunica-  
 tion against the Kings, Iudges, and Magistrates, secluding  
 them as farre as his follie might, from the fellowship and  
 companie of Christians, because they had by course of  
 lawe imposed a fine vpon a Profelite of theirs, newlie crept  
 into their vnholie orders, for his trespasse committed in  
 the Kings Forrestes. So likewise the reuerende Iudge Mai-  
 ster *Fitzherbert*, declared, that in the time of King Henrie  
 the 6. a Bishop of *Winchester*, being outlawed for no lesse  
 fault then wilfull murther, and his temporalities therfore  
 seized into the Kings handes, refused the iudgement of  
 lawe, and sued to the court of Roome, the Pope writinge  
 to the King in his behalfe, aunswere was made, that the  
 lawes of this Realme were such: wherevpon as vanquished  
 and driuen from his shiftes, the Bishop submitted him-  
 selfe to the grace of the King (and though vnworthie) ob-  
 teined pardon. We heard also in the 2. yeare of King H. 4.

17. H. 3.

how



howe the Popes publication or collector tooke vpon him by vsurpation of authoritie, to take both oath and obligation of a certain Vicar, to holde him selfe contented with such endowment as the collector had appointed, the Parsonage being appropriate to the Deanrie of Windsor, and howe the Deane drew the Vicar into plea before this new founde Iudge the Collector, for the breache both of his oath and bonde. Vpon which wrong done to the Royall jurisdiction, the Vicar complayning, had a Prohibition. In which case are principallie to be noted, the vnlawfull imposing of an oath by one that was no Magistrate, but *quid domini facient audent cum talia fures*, and th'injurious prosecuting and drawing into plea of the Kinges subject before an incompetent Iudge by this Deane, a Cleargie man of the Realme. In like sorte the Hospitallers and Templers, assuming to them selues jurisdiction in prejudice of the King and of his Crowne, drew the subjectes of this Realme into suite before the Conseruators of their Priviledges, for causes perreyning to the jurisdiction of the Kings Courtes, for reformation whereof the statute of *Westm.* the 2. cap. 43. was ordeyned. Howe rigorous, injurious, and intollerable the dealinges *ex officio* by those Prelates and Ordinaries were (whereof these examinations by extorted oath were a principall parte) the grievous complaint of the whole Communalitie of this Realme in the 23. yeare of the reigne of King H. 8. doeth sufficientlie declare. Whereby the King was enformed, how these merciless Ordinaries by their extraordinarie & lawlesse power, cited and sommoned his subiectes, feyned and framed straunge accusations against them, no accusers appearing, examined them vpon articles captiouslie deuised for their purpose, and in the ende admitting no defence, and disallowing all purgation, forced them to abjure, or condemned them to the fire, a most fearfull and barbarous course of inquisition. Vnto which complaint those Pharisaicall Cleargie men (who will not enter Pilates common Hall, least they should be defiled, and yet crye out with loude



voyce, *Crucifige, crucifige*, made (as to the King him selfe there it seemed) a verie weake and slender defence. And no maruayle, since wickednesse may more easilie be committed, then well defended.

But will you see more fullie and clearelie, beholde as in a glasse the manifold vsurpations, incrochmentes, injuries and oppressions committed and done from time to time, by the Pope, Prince of that curssing & accursed Cleargie, and by his sworne & deuoted Baalamites and shauelinges, against the rightes and prerogatiues of this Imperiall Crowne, the lawes of this Monarchie, and the liberties of the subjectes thereof, then read and consider the griuan- ces of the commons exhibited against the Cleargie Anno 21. H. 8. the seuerall statutes of Prouision and Premunire, the statutes of Mortmaine, with the diuers kindes of pro- hibitions to the Courtes and Consistories Ecclesiasticall.

Among which you may finde an especial prohibition with an attachement therevpon deuised against these injurious oathes and examinations, as against abuses greatlie offen- siue to the Crowne and dignitie Royall. Which the better shall appeare by the writtes them selues, which are in this forme let downe in the Register, *Rex Vicecomiti salutem.*

Prohibitio.

*Precipimus tibi quod non permittas quod aliqui Laici ad citationem talis Episcopi, aliquo loco conueniant de cetero ad aliquas recognitiones faciendas, vel Sacramentum prestan- dum, nisi in casibus Matrimonialibus & Testamentarijs, te- ste, &c. And the Attachement is in this maner: Rex Vic. salutem. Pone per vados, &c. talem Episcopum quod sit coram Iusticiarijs nostris, &c. ostensurus, quare fecit summoniri, & per Censuras Ecclesiasticas distringi laicos personas, vel laicos homines & fœminas, ad comparendum coram eo, ad prestandum iuramentum pro voluntate sua ipsis inuitis, in- graue prejudicium Corona & dignitatis nostra Regia; nec non contra consuetudinem Regni nostri, &c. By the conside- ration of which writtes, and especiallie of these wordes, re- cognitiones & sacramentum pro voluntate sua, and ipsis in- uitis, we may plainlie perceyue, howe all these inquiries,*



examinations, and sifting out of matters by oath and by way of inquisition in the Courtes Ecclesiasticall, are by the Regall authoritie impugned, and that as prejudicial to the Crowne and dignitie Royall, and the lawes and customes of this Realme, these wordes *pro voluntate sua*, expresse deuoting vnto vs the vsurped officious power, and licentious pleasure, whereby contrarie to all due course of Iustice they constraine an oath. And these wordes (*ipsis inuitis*) manifestlie painting out the rigorous, injurious, and compulsarie exacting of the same. Moreouer, we see it declared by the statute of *Marlebridge*, cap. 23. That no man may compell anie free-holder of this Realme, to sweare against his will, without the Kings precept or commaundement, that is, according to the lawe and Iustice of this Realme: for so are we taught to vnderstande the same by the booke of Anno 2. R. 3. whereby it is euident, that vnlesse these Ordinaries could prooue their forcing of oathes *ex officio*, to be warranted by authoritie of the lawes and justice of this lande (as in trueth they can not) all their dealinges in such cases, are by the same lawes vtterlie disallowed and condemned.

But here (me thinkes) some retchlesse or inconsiderate reader steppeth forth and sayeth, What is your meaning to circumscribe and include all authoritie of ministringe oathes in the Courtes Ecclesiasticall within the streight limites and boundes of causes Testamentarie and Matrimoniall, howe then shall all other matters subiect to their iurisdiction (being in number manie, and in nature diuers) receyue due examination. For aunswere therevnto, this shortlie may suffice, That the state of the question whiche at this present we haue in hande, is not in what cases those Courtes may giue or impose an oath, but the matter when of we nowe intreate is, concerning forced and constrained oathes *ex officio*, and especiallie in that generall maner before remembred. And as touching the triall of causes by examination of witnesses iudiciallie depending betweene partie and partie in th' Ecclesiasticall Courtes, it standeth

Hindes case  
and 18. R.  
Eliz. proo-  
ueth no  
lesse.



firme and for sounde lawe, according to the saide Prohibit-  
 on, and the opinion of Maister Iustice *Fitzherbert*, in his  
 booke of Iustice of Peace, is, That those Iudges Ecclesia-  
 sticall haue no lawfull power or authoritie to force or con-  
 straine by censures of the Church or otherwise, any sub-  
 ject of this Realme, against his will to testifie vpon his  
 oathe, other then in the foresaide causes of Mariage and  
 Testamentes, although comming before them, as produ-  
 ced by the parties in the suite, they may lawfullie (as vnto  
 men voluntarilie accepting the same) minister an oath, o-  
 therwise it is plaine extortion, and wrong vnto the partie.  
 And admitte they would denie to depose, what prejudice  
 were that to the Court Christen, but rather a saylinge in  
 prooffe in the partie suing. And in this state and sorte stan-  
 deth the prooffe of causes by witnesses at the common law.  
 Neuerthelesse, since the statute made against wilfull per-  
 jurie, the witnesse serued with processe, and hauinge his  
 charges rendered, making default, incurreth a paine pecu-  
 niarie. And why should the Cleargie and Iudges Ecclesia-  
 sticall thinke it much, to be ruled and restrayned concer-  
 ning their iurisdiction by the Kings Prerogatiue, and the  
 common lawes of this Realme, since what iurisdiction or  
 authoritie soeuer they haue or enioye (matters of the Di-  
 uine lawe excepted) yea even in those especiall causes of  
 Testamentes, Mariages, Diuorces, and Tythes, is no other-  
 wise theirs, then by the goodnes of the Princes of this  
 Realme, and by the lawes and customes of the same, as the  
 statute of Anno 24. H. 8. cap. 12. well declareth, and may  
 be taken from them and restored to the temporall Iudges,  
 especiallie the abuses of the Cleargie well deseruing it at  
 the will and pleasure of the Prince and people. But to re-  
 turne againe to our prohibition and attachment, it is e-  
 uident thereby, that all the sommons and citations which  
 those Ecclesiastical Iudges sende forth vnder these general  
 termes, *propter salutē animarum*, or, *ex officio meo*. And all  
 their arrestes, distresses, impeachmentes, excommunica-  
 tions, and imprisonmentes therevpon ensuing, are altogi-  
 ther



ther injurious, both to the Prince and people. And of this opinion seemeth to be that learned Iudge Maister Fitzherbert, who in his booke *De natura breuium*, sayeth vpon these writtes in this maner: By this appeareth, that these generall citations which Bb. make to cite men to appeare before them *pro salute anime*, without expressing any cause especiall, are against the lawe. And true it is, for by the statute of *Magna Charta*, (conteyninge many excellent lawes of the liberties and free customes of this Kingdome) It is ordeyned, that no free man be apprehended, imprisoned, distrained or impeached, but by the lawe of the land: and by the statute made Anno 5. Ed. 3. ca. 9. It is enacted, That no man shall be attached vpon any accusation contrarie to the forme of the great Charter, and the lawe of the Realme. Moreouer it is accorded by Parliament Anno 43. E. 3. ca. 9. for the good gouernement of the Communitie, That no man be put to aunswere, without presentment before Iustices, or matter of recorde, or by due proesse, or by writt originall, after the auncient lawe of this Lande. And howe then shall that kinde of proceedinge *ex officio* by forced oathes, & the vrging of this general oath, and streight imprisoning of such as refuse to sweare, bee justifiable. If these things were not, yet a man would haue thought that at the least the sharpe and seuerer statutes of Prouision and Premunire, so offensive to popishe Polidore and such like, should haue staied and stopt the violent *Premunire* course of those injurious inquisitions, examinations, and wrested oathes *ex officio*. For, no doubt, the Ordinaries & Cleargiemen practizing the same, are all offenders, & doe incur the forfeitures of those penal lawes. For profe whereof, let vs consider the wordes of the statute of Premunire, made Ann 16. Ri. 2. ca. 5. and the judgments & expositions therevpon had, that statute reciting first the grieuous complaint of the whole Realm against the Pope of Rome, who impeached many Patrons in the presentations to their Ecclesiasticall benefices, excommunicated the Bb. of this realme, for executing the kings writts *de Clerico admittendo*.

*Magna  
Charta.*



do, sought to translate some of them against their and the Kings will, and diuers other inconueniences, in derogation of the Kings Crowne and Regalitie, prouideth remedie for those and such like mischiefes, in this maner: That if any purchase, or pursue, or doe to be purchased or pursued in the Count of Rome, or elsewhere, any such translations, processe & sentences of excommunications, bulles, instrumentes, or any other thinges whiche touche the Kinge, against him, his Crowne, and his Regalitie, or his Realme, or them receyue, or make thereof notification, or any other execution within the same Realme or without, that they, their Notaries, Procurators, Maintainers, Abbettors, Fautors, and Counsellors, shalbe put out of the Kings protection, and their landes and tenementes, goods and chattelles forfait to the King, &c. Since the making of whiche statute, it hath bene helde and adjudged for cleere lawe in the Kinges Courtes, That if any subject of the Kinges sue or impleade an other in any Ecclesiasticall Court of this Realme, for any cause or matter appertayninge to the examination and judgement of the Courtes of the common lawe, or any judge Ecclesiasticall presume to holde plea thereof, or deale in any causes not belonginge to his jurisdiction, that they incurre the daunger and penaltie of premunire, as by the booke of 5. Ed. 4. fol. 6. & by th'opinion of the Court Anno 11. H. 7. remembered by Maister Fitzherberts, plainelie doeth appeare. According also therevnto is the case of Maister Barloo, late Bishop of Bath, reported by Maister Iustice Brooke, Which Bish. in the time of Kinge Edward the 6. depriving the Deane of Welles, whose Deanrie was a donative, passing therein beyonde the limites of his jurisdiction, fell into the daunger of premunire. And being called into question, and hauinge no just defence, was faine to appeale to the Kings mercie, and obteyned a pardon. And that booke of 5. E. 4. before remembered, setteth downe the reason, noting these wordes of this statute (*in curia Romana vel alibi*) In which wordes (*alibi*) sayeth that booke, is inteded the Courtes of Bb.

So



So that if a man be excommunicate in any of their Courts for a thing which apperteyneth to the Royal Maiest. that is to say (sayeth that booke) in a matter of the common lawe, the partie excommunicate shall haue a premunire facias, and so was it adjudged. In whiche wordes among other, is speciallie to be noted, that when so euer a wrong or injurie is offered to the common lawe of this lande, there the Kinge is saide to be touched, and his Royall Maiestie impeached. For accordinge to the Princelie speech of that most Noble King Ed. 3. in the statute of Prouision made in the 38. yeare of his raigne, the Kinges Regalitie chieflie consisteth in this, *To susteine his people in peace and tranquillitie, and to gouerne them according to the lawes, vsages, and franchises of this Lande, wherevnto he is bounde by his sacred oath made at his Coronation.* If then by vsurping cognizance of plea, in causes cōcerning the common lawe, and the iurisdiction of the Kinges Courtes, the Ecclesiasticall Iudges touch the King in *Capite*, doe against him, his Crown, Regalitie & Realme, & so cōsequentlie incurre the forfeiture & penalties of Premunire: Howe much more doe they touch the King, nay rather lay violent handes on him, & impugne his Royall Throne and Scepter, who contrarie to the Pollicie, Iustice, Lawes, Customes, and Freedomes of this Kingdome, yea the lawe of God it selfe, enforce & constraime by censure of excommunication & otherwise, the Kings people to appeare before them, and extort from them an oath to accuse them selues. And for more plaine demonstration (if plainor may be) put the case that a Iudge, Iustice, or Commissioner, authorised by the Kinge to execute justice according to the lawes of this Realme, should take vpon him by colour of his office and authoritie to conuent the Kings people before him, and vppon their apparaunce to offer vnto them this general oath to answer vnto all such questions as him selfe should propounde, playing in causes criminall the part both of accuser and Iudge, or seekinge by oath and captious In-



interrogatories, matter of accusation, wherevppon to pro-  
 ceede to condemnation, and to commit the partie refu-  
 sing such oath, to streight prison without bayle or main-  
 prise, could any man justifie this his doing to stande with  
 lawe or justice? Nay rather, might not euerie man justlie  
 cry out against him, as against a subuerter of lawe and  
 judgement, and a hatefull enimie to our pollicie & com-  
 mon wealth, yea should not that bee verified of him,  
 which is recorded in the judgement against Sir William  
*Thorp*, sometime chiefe Iustice of Englande, for his cor-  
 rupt dealing, which is, that as much as in him laye, he  
 had broken the oath which the King is bounde to keepe  
 towards his people. If all this may truelie be affirmed of  
 such a one, howe then shall the Ecclesiasticall Iudges,  
 practizing in their Courtes and Tribunal Seates, the self-  
 same vnjust and vnlawfull manner of proceeding against  
 the Kings people, escape the seuerer sentence of law, pro-  
 nouncing them offensive touchers, and violaters of the  
 King, and injurious dealers against his Regalitie, Crown  
 and Kingdome, & so consequentlie worthie to suffer the  
 paines and penalties declared in this statute of Premu-  
 nire. That this is no newe opinion or construction, wee  
 finde the resolution of that learned man Saint Germaine,  
 in his booke of *Doctor and Student* well agreeing, where  
 he writeth in this maner: *If any man bee excommunicate  
 in the spiritnall Court for debt, trespass, or such other thing,  
 as belongeth to the Kings Crowne and to his Royall dignitie,  
 there he ought to be assoyled without making any satisfacti-  
 on, for they not onelie offended the partie, in calling him to  
 answer before them of such things as belong to the law of  
 the Realme, but also the King, who by reason of such suites,  
 looseth a great advantage, which he might haue of the writs,  
 originalles, iudicialls, fines, amerciamentes, and such other  
 things, if the suites had bene in his Courtes accordinge to his  
 lawes. Hee sheweth further, That if the Ecclesiasticall  
 Iudges will not make the partie his letters of absolutio where  
 hee ought, the partie shall haue his action against him. Hee*

affir.



affirmeth also, *The Lawe to bee according Where a man is accursed* (he meaneth excommunicate) *for a thinge that the Judge had no power to accurse him in, notwithstandinge that he may haue his suite of premunire facias.* Againe we reade howe the late Cardinall Woolsey, the Popes Legate here in Englande, erected a newe Court or Consistorie called *The Court of the Legate*, in which he tooke vppon him to proue Testamentes, and to heare and determine causes in prejudice of the iurisdiction Ecclesiasticall of this Realme. And howe by his vsurped power Legatiue, he gaue and bestowed benefices by preuention, to the disinheritaunce of the Kings subiectes, and visiting the state Ecclesiasticall, vnder coulor of reformation, gained to him selfe exceeding great treasure. But this loftie height of vnlawfull authoritie, weake and feeble in foundation, could not long continue, For in the one and twentieth yeare of the reigne of King Henrie the eight, this proude prieste with all his glorious pompe and glittering shewe of all his Crosses, Silver Pillers, guylt Axes, imbrodered Cloakbagges, and purple Hattes, was attained by his owne confession, in a Premunire, and the next yeare following, all the Lordes spirituall, hauinge deserved the same paines and punishmentes for their vnjust maintenance and supportation, were called to answer in the Kings Benche, and knowing them selues guiltie, before their day of appearaunce, exhibited to the Kinge their humble submission, joyninge therevnto an offer of a 100000. pounce, to purchase their peace, whiche after much suite, the King accepted, and by Parliament gaue them a pardon. If then this Romish Legate, for assuming to him selfe iurisdiction by authoritie Papall, in prejudice not of the Kings Coures, but of the Courtes Ecclesiasticall (neuerthelesse to the hurt of the Royall Maiestie) and for disturbaunce of the rightes and inheritaunce of the Kings subiectes, fell into the daunger and penaltie of Premunire, and all the Bishops and Ordinaries of this Realme likewise, through their maintayning onelic and



## A. TREATISE

supporting the same, may we not safelie conclude that the Bishops and Ordinaries in these dayes vsurping power and jurisdiction in like sorte and maner (although not in the same particulars) by coulor of Antichristian decrees, or practizing those popishe Cannons, the verie head of that hellishe *Cerberus* of Rome (as a learned man well termed them) and the sinewes of his tyrannicall authoritie, repugnant to the Royall Maiestie and Pollicie of this Realme, that is to say, forcing vnjustlie the people of this lande, to such vnlawfull oathes and examinations as are before remembred (injuriously touching thereby the Prince in her Regalitie, and her people in their lawfull libertie wherevnto they are inheritable, matters of more waight and moment, then the hinderaunce of the Bish. jurisdiction or losse of a presentment to a benefice) doe incurre the penalties and forfeitures limited by the foresaide statute of Premunire.

*Cannon  
lawe.*

*Sleidan.*

If any man neuerthelesse vrge and contende, that these thinges are justifiable by force of the Popes testament (the Cannon and Pontificall lawe I meane) of long time practized, & continuallie vsed within this Realme, giuing a newe probate and allowance thereto, after so publique and iust condemnation, and syring of them by that famous Clarke and Doctor of the Church *Martin Luther*, and by the great number of godlie and learned men his associates, as lawes and ordinaunces contumelious against God, injurious to Magistrates, and especiallie established to mainteine Antichristian tyrannie, let him knowe, that this Kingdome is not bounde or subject to any forreyne made lawes or constitutions, not suffered by the King, and voluntarilie accepted, and of longe time vsed by his people, as it is well declared by the saide statute of Anno 25. H. 8. whose wordes are these: *For where this your graces Realme recognizinge no superiour vnder God but onelie your Grace, hath bene and is free from subjection to any mans lawes, but onelie to such as haue bene deuised, made and ordeyned within this Realme, for the wealsh*



wealth of the same, or to such other as by sufferance of your Grace, and your Progenitors, the people of this your Realme haue taken at their free libertie, by their owne consent, to bee used among them, and haue bounde them selues by long vse and custome, to the obseruance of the same, not as to the obseruance of the lawes of any forreine Prince, Potentate, or Prelate, but as to the accustomed and auncient lawes of this Realme, originallie established as lawes of the same, by the saide sufferance, consentes, and custome, and not otherwise, &c. So to proue any forreine made lawe allowable within this Realme, there must concurre Tolleration by the Kinge, voluntarie acceptaunce of his people, and a long and a large time of vsage. None of which can be auerred in these maner of oathes and examinations. For firste it may not be saide that the King suffereth that which he expressely forbiddeth by his writtes and procelle, as offensive to his Crowne and Regalitie. Neyther can his people bee saide to haue given voluntarie consent thereto, hauing alwayes repyned and often complayned and cryed out against it, as a thing intollerable and injurious to their lawfull libertie, the custome pretended, being euer impugned (and that justlie) can create no lawefull prescription, nor stande for an auncient lawe of this Realme, but being against both lawe and reason, it is nothing els but an inveterate error or disorder.

If defence be sought by any Canon or Constitution, *Canon.* (these oathes being so apparauntlie against this our state, common wealth and gouernement) I see not howe anie Ordinarie, but to his reproache, may once open his mouth therein, considering that in the Parliament holden Anno 25. H. 8. The whole Cleargie of Englande not onelie for them then liuing, but for their successors also, submitting them selues to the Kings Maiestie, promised *Provinci- ciall. Cap. 9.* (in verbo Sacerdotij) if that bee ought worth, That they would neuer from thence forth presume to attempt, alledge, claime, or put in ure, or enact, promulge, or execute any newe Canons, Constitutions, Ordinaunces pro-



uinciall or other, or by what soeuer name they should be called in their conuocation without the Kings most Royall assent or licence.

And considering also that in the same Parliament by their full consent, it is enacted and provided, That no Canons, Constitutions, or Ordinaunces, should be made or put in execution within this Realme, by the authoritie of the conuocation of the Cleargie, which should be contrariant or repugnaunt to the Kinges Prerogatiue Royall or the customes, lawes, or statutes of this Realme, nor to the dammage or hurt of the Kinges Prerogatiue Royall, should still be vsed and executed vntill, &c.

But notwithstanding all those prouident and politique lawes and statutes thus for the good of the common wealth wiselie established in the great Assemblie of the Realme, and notwithstanding also those solemne promises and protestations made as aforesaide, & although in the 2. yeare of the reigne of King *Henrie* the thirde, there was a most seuerer sentence of curse and anathematization denounced in the presence of the King, and the Nobles of this Kingdome by *Boniface*, then Archbishop of *Canterburie*, and manie other Bishoppes, apparelled in their Pontificalibus, against all such as thereafter should willinglie, and maliciouſlie, by any craft or engine, violate, infringe, diminishe, or chaunge secretlie or publicuelie, by deeде, worde, or counsell, any of the free customes of this Kingdome, and especiallie those conteyned in the saide great Charter, yet the vnbrideled Cleargie men in the Papisticall time, nothing regarding the good estate of this our pollicie, neyther yet terrified by their owne cursing censures, and execrations, nor by the seuerer lawes of Premunire, most impudentlie (to satisfie their owne licentious and lordlie lustes) haue from time to time ascited & sommoned by their lawlesse procelle, and arrested and attached by their malapart apparitours, messengers, and pursenautes, the free people of this Realme, by violence drawing them not onelie into their publique Courtes and Consistories, but priuatelie  
also



also into secreete corners and priuie chambers, forcinge them there with roughe and rigorous termes of disgrace and reproache, vpon euerie base surmise, and vncertaine rumor, to take a corporall oath to bee examined vpon articles captious and deceitfull, seekinge thereby most vncharitable for matters of accusation. Against whom if anie man durst (standing vpon termes of his lawfull libertie) but a little repine and refuse to sweare, streightway he must bee committed to prison, without baile or mainprise, there to abide paine *for et dure*, depriuinge men of that which is more pretious then life it selfe, and as it is saide in the ciuill lawe, a Iewell inestimable, libertie I meane, more to be fauoured, then any thing, as the same lawe speaketh, tyrannizing in such cruell manner ouer the poore and miserable people, in their vile and filthie Cole-houses, murthering Towers and Turrettes, and in their darke and deadlie Dungeons, as no tongue or penne is sufficient to expresse. And whereas the prisons of this Realme were ordeyned either for the punishment of such as are by due course of lawe condemned, or for restraint of persons suspected, not bayleable for a time conuenient of examination and iudiciall proceeding. Those mercilesse Magistrates voyde of all pitie and compassion, after their suddaine and raginge commitments for the most parte proceeded not to full examination and sentence, but after long and miserable imprisonment, in so much as it was thought a great fauour, if after one yeares grieuous and streight imprisonment, the poore distressed partie were called forth to answer. At the time of which sitting in their tribunall Seate (howe gloriouslie soeuer they paint out their sentences, to haue God and Iustice in their sight) these men, or rather monsters, coueting more the destruction of mankinde, then any amendement or reformation of maners, fedde with delight their fierce and cruel mindes, with the pitiefull sight of pyned, sicklie, and wretched creatures, they them selues in the meane time beinge fatt and well fedde. And although the heathen Emperours,

Clau-



*Claudius Caligula, &c.* who tooke delight to be present at the bloudie tortures & executions of their subiectes, & to heare their pitifull groanes and grievous sighes (commanding th' executioners so to strike, as the condemned might feele himselfe to die) may worthilie bee termed fierce, cruell and barbarous, accordinge to that sayinge: *Qui fruitur poena ferus est*; yet the extreeme crueltie of those men which termed them selues Catholiques, and would be accompted true Christians, was more horrible & detestable a great deale. In so much as they by lingring tormentes of long and painfull imprisonment, exceeded the leysure vsed by the other in the time of execution, taking from Death his due title of *King of terrors*, and making him a welcome friende, that endes so manie miseries. Adde herevnto that the tyrannie of those heathen men, as fullie satisfied, ceased with the life of the tormented, but the crueltie and furie of those Catholiques, as neuer wearied, condemned and put to fire the dead bodies of those whom they before moste treacherouslie had slaine and murdered. But as these good Pastors, or rather devouring Wolves, were in this inexcusable manner most cruell against Christes deare seruantes, so againe in some other thinges they were as vaine and ridiculous. For in this matter of an oath, they haue deuised (according to their toying fantasie) a certaine foolish figuratiue ceremonie in the ministringe thereof. For the deponent forsooth, must laye his three middle fingers stretched out right vppon the booke, in signification of the holie Trinitie and Catholique faith, and his thumbe and little finger hee must put downe-wardes vnder the booke, in token of damnation, both of bodie and soule, if hee say not the trueth: the thumbe belike, as the greater, representing the heauie masse of the bodie, and the little finger, the light and incorporall substance of the soule.

Howe superstitious also they were concerning this ceremonie of the booke (little regardinge the true vse and

ende



ende of an oath) as appeareth by the Allegoricall exposition curiously set forth by one of their parsonate and counterfeite Prelates, who sayth, That the circumstances in the acte of an Oath, are verie great and waightie, inasmuch as hee that sweareth by a booke, doeth three things. First, as though hee should saye, Let that which is written in the booke, neuer doe me good, neyther the newe nor the olde Lawe if I lye in this mine oathe. Secondlie, hee putteth his hande vppon the booke, as though hee should say: Nor the good worke whiche I haue done profite mee ought before the face of Christe, except I saye the trueth, which is founded in Christe. Thirdlie, he kisseth the booke, as though he should say, Let neuer the prayers and petitions which by my mouth I haue vttered, auayle me any thing to my soules health, if I saye not truelie in this mine oath. Yet you must take this I suppose, as meant onelie by this reuerend father, where lay men, or the baser sorte of the Cleargie, take an oath. For that blessed *Bonner*, not longe since hath taught, as this tricke of their lawe, as he termed it, that a Bishop may sweare (such is his priuiledge) *in spectis Euangelij & non tactis*, bare sight of the booke without touche or kisse, will well ynough serue his Lordshippes turne. Againe, the imposing of oathes vpon the rotten bones, ragges and reliques of their canonized and counterfeited saints, and vpon the Image of the Crucifige, is both foolishhe and idolatrous.

But to conclude, leauing these vniust and lawlesse men with their bad practises & sonde inventions, I doubt not, by these fewe, yet effectuell proofes and authorities, it doeth manifestlie appeare vnto all men of vpright and sounde judgement, That aswell the imposinge as the taking of these generall oathes, is a prophane abusinge of the holy Name of God. That the exacting of Oathes *ex officio*, is a great indignitie to the Crowne and Scepter of this Kingdome, and a wrong and injurie to the freedome



and libertie of the subjectes thereof. That the same is not necessarie or profitable to the Church and common Wealth, but hurtfull to them both, brought in onely by the practize of the Popishe cleargie, to the prejudice of the publique peace and tranquillitie of this Realme, and that the same neuer had any good allowaunce by anie lawe, custome, ordinaunce or statute of this Kingdome, neyther yet put in vre or vse by any ciuill Magistrate of this Lande, but as it corruptlie crept in among manie other abuses, by the sinister practize and pretences of the Romish Prelates and Celargie-men, so this their vnlawfull dealing hath bene from time to time by lawfull and iust Authoritie impugned and restrained.

## FINIS



